TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1[redacted] 1949

No. [redacted] 33

CHARLES QUICKSALL, PETITIONER,

vs.

PEOPLE OF THE STATE OF MICHIGAN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

PETITION FOR CERTIORARI FILED NOVEMBER 8, 1948.

CERTIORARI GRANTED FEBRUARY 28, 1949.

State of Michigan

In the

SUPREME COURT

APPEAL FROM THE 9TH JUDICIAL CIRCUIT COURT OF KALAMAZOO, MICHIGAN

Honorable George V. Weimer, Circuit Judge

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff and Appellee,

vs. Calendar No. 43970

CHARLES QUICKSALL,
Defendant and Appellant.

RECORD ON APPEAL

CHARLES QUICKSALL, No. 40086,
Defendant and Appellant,
Acting In His Own Behalf.
Business Address:
4000 Cooper Street,
Jackson, Michigan.

EUGENE F. BLACK,
Attorney General of Michigan;
ROBERT BARBER,
Prosecuting Attorney for Kalamazoo County for the People.

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(Note — "This record on appeal is a true duplicate copy of all the proceedings had in this cause of the foregoing settled case.")

PLEADINGS, ETC.

CALENDAR ENTRIES

DATE	PROCEEDINGS
1937	
July 16,	Filed returns from Municipal Court.
16,	Filed information.
16,	9:30 A. M. Arraigned and information read by Prosecuting Atty. Respondent pleaded guilty to First Degree Murder. Plea accepted by the Court and respondent remanded without bail.
16,	10:45 A. M. Proofs taken and respondent sentenced to Southern Michigan State Prison at Jackson and there be confined in solitary confinement at hard labor for the rest of his natural life.
16,	Filed Judge's statement.
24,	Filed report.
Sept. 10,	Filed removal warrant.
1947	
Apr. 18,	Filed motion for leave to file delayed motion to vacate judgment and sentence and allied papers.
30,	Filed petition for writ of habeas corpus and motion.
30,	Issued writ — transfer warrant.
May 9,	Hearing on motion for leave to file delayed motion to vacate judgment and sentence and for a new trial; taken under advisement by the Court.
13,	Enter order denying the motion of the Defendant for leave to file a delayed motion to vacate judgment and sentence and for a new trial.
13,	Filed notice of order.

DATE	PROCEEDINGS
1947	
June 20,	Filed Memorandum.
25,	Filed proof of service.
25,	Filed petition for order for extension of time to settle application for leave to appeal.
July 22,	Filed praecipe for motion and allied papers.
22,	Filed record on appeal etc.
Oct. 15,	Filed notice of service.
Dec. 14,	Filed claim of appeal and proof of service.
17,	Filed notice of settlement of record and proof of service.

STATE OF MICHIGAN

ss.

COUNTY OF KALAMAZOO

I, ANTHONY STAMM, Clerk of the Circuit Court for the County of Kalamazoo, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of Calendar Entries entered in the above entitled cause in said Court as appears of Record in my office. That I have compared the same with the original, and it is a true transcript therefrom, and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court at Kalamazoo, this 10th day of March A. D. 1948.

Anthony Stamm,
County Clerk.

By Philip Hassing,
Deputy Clerk.

(SEAL)

NOTICE OF SETTLEMENT OF RECORD ON APPEAL

(TITLE OF COURT AND CAUSE)

To: Robert Barber,
Prosecuting Attorney,
Kalamazoo, Michigan.

Please take notice that the annexed is a true copy of Defendant's proposed record on appeal in the above entitled cause and reasons and grounds of appeal on which said record is based and that the same will be brought on for settlement before the Circuit Court for the County of Kalamazoo, before the Honorable Geo. V. Weimer on the Tuesday the 23rd day of December A. D. 1947 at 10 o'clock in the forenoon of said day, or as soon thereafter as the same may be heard at Kalamazoo Court House in the City of Kalamazoo, Michigan, at which time and place you may propose such amendments as you may desire.

(s) Charles Quicksall,
Defendant and Appellant.
4000 Cooper Street,
Jackson, Michigan.

DATED: December 15th, 1947.

CLAIM OF APPEAL
(Filed Dec. 13, 1947)

STATE OF MICHIGAN
IN THE SUPREME COURT

THE PEOPLE OF THE STATE
OF MICHIGAN,
Plaintiff,

vs.

Calendar No. 43970

CHARLES QUICKSALL,
Defendant and Appellant.

Charles Quicksall, Defendant and Appellant, claims an appeal from the order entered July 16th, 1937 by the Honorable George V. Weimer, Judge of the 9th Judicial Circuit Court of Kalamazoo, Michigan. Appellant takes a general appeal, with due notice to all parties concerned.

Respectfully submitted,

S/ Charles Quicksall
Charles Quicksall, No. 40086
Defendant and Appellant.
Business Address:
4000 Cooper Street,
Jackson, Michigan.

Dated: December 8th, A. D. 1947.

AFFIDAVIT OF PROOF OF SERVICE OF CLAIM OF APPEAL

STATE OF MICHIGAN
IN THE SUPREME COURT

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

vs. Calendar No. 43970

CHARLES QUICKSALL,
Defendant nad Appellant.

STATE OF MICHIGAN,

SS.

COUNTY OF JACKSON

Charles Quicksall, being first duly sworn, deposes and says that he is the defendant and appellant in the above entitled cause, that on the 8th day of December, A. D. 1947, he served the original Notice of Claim of Appeal with Mr. Jay Mertz, Clerk of the Supreme Court to be placed on file, and a true copy to Mr. Anthony Stamm, Clerk of the Circuit Court to be placed on file, and a true copy to Robert Barber, Prosecuting Attorney for the People of the County of Kalamazoo, Michigan, and also a true copy to Esq. Eugene F. Black, Attorney General of Michigan, by enclosing the same in envelopes addressed to the above named parties with a sufficient amount of postage, by mailing the said documents in the United States Registered Mail,

at the State Prison of Southern Michigan, at Jackson, Michigan, and requesting a return receipt for the proof of the delivery of same.

, Respectfully submitted,

S/ Charles Quicksall,
Deponent.

Subscribed and sworn to before me a Notary Public, this 8th day of Dec. A. D. 1947.

S/ Paul G. Stowers,
Notary Public.

My Commission expires Sept. 11, 1951.

ORDER GRANTING APPLICATION FOR LEAVE TO APPEAL

(TITLE OF COURT AND CAUSE)

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the Capital of Lansing, on the third day of December, in the year of our Lord one thousand nine hundred and forty-seven.

Present the Honorable:

Leland W. Carr,
Chief Justice;
Henry M. Butzel,
George E. Bushnell,
Edward M. Sharpe,
Emerson R. Boyles,
Neil E. Reed,
Walter H. North,
John R. Dethmers,
Associate Justice.

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

vs. 43970

CHARLES QUICKSALL,
Defendant.

In this cause an application is filed by defendant for leave to appeal from the sentence of the Circuit Court for the County of Kalamazoo and a brief having been

filed by the Attorney General, and due consideration thereof having been had by the Court, It is ordered that the application be and the same is hereby GRANTED.

STATE OF MICHIGAN—SS.

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said Court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal of said Supreme Court at Lansing, this 3rd day of December in the year of Our Lord one thousand nine hundred and forty-seven.

(SEAL) S/ Jay Mertz,
Clerk.

REASONS AND GROUNDS FOR APPEAL
(Filed July 22, 1947)

STATE OF MICHIGAN
IN THE SUPREME COURT

APPEAL FROM THE CIRCUIT COURT OF KALAMAZOO

Honorable Geo. V. Weimer, Judge of the 9th Judicial Circuit

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,
vs.
CHARLES QUICKSALL,
Defendant and Appellant.

Now comes the said Defendant Charles Quicksall, in his own Proper Person, acting in his own behalf in the above entitled cause, and says that the Honorable Judge of the 9th Judicial Circuit Court erred.

In denying Petitioner's Motion to vacate Judgment and Sentence, and which the defendant alleges as reasons and grounds for appeal, in the following particulars:

(A)

Because the Defendant is not guilty of the alleged crime of murder in the First Degree, as charged in the People's Information, either in law or in fact; and con-

tends of speedy justice by abridgment of trial, and is submitted that the Honorable Trial Court wherein Defendant was tried automatically lost jurisdiction through error when the Prosecuting Attorney made out a defective Information.

(B)

Because the defendant in this cause was denied the right to assistance of Counsel, that his plea was entered because of misunderstanding, through the effect of misrepresentation.

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Because the trial Court failed to advise Defendant of the consequences of his plea and did not advise defendant of the difference between first degree Murder, second degree Murder and Manslaughter, and that the Trial Court sentenced Defendant to Prison on a capital offense the same day that he pleaded guilty and in less than one hour.

This is submitted to be an act of the State and is submitted to have breached the Constitutional Provisions of Due Process of Law through the Fifth and Fourteenth Amendment of our Constitution.

(C)

Because the defendant was denied his constitutional rights of the Equal Protection of Laws by the 9th Judicial Circuit Court of Kalamazoo, Michigan, as is guaranted by both State and Federal Constitutions, through the Fifth and Fourteenth Amendment, as is more specifically set forth as follows:

(1)

Because the defendant was denied his constitutional rights by the sheriff and the prosecuting attorney while held in custody his right to the use of a telephone.

(2)

Because the defendant was denied the right to assistance of Counsel and further denied the right to consult with his relatives and friends.

(3)

Because the sheriff and the Prosecuting Attorney prevented the defendant from being accorded his constitutional rights. Should defendant in this cause be given an opportunity to withdraw his plea.

(D)

Because such judgment is invalid because, obtained in violation of Procedural guarantees protection against State invasion through the Fifth and Fourteenth Amendment.

Because the above is based upon the records and files in this cause and upon the affidavit of Charles Quicksall, Defendant and Appellant in this cause, which is hereto attached.

Therefore the defendant says that for the aforesaid errors, the judgment entered in said cause and the sentence heretofore imposed on the defendant ought to be reversed, vacated and the defendant discharged.

Respectfully submitted,

S/ Charles Quicksall,
Defendant and Appellant.

Dated: July 18th, A. D. 1947.

AFFIDAVIT

(Filed July 22nd, 1947)

STATE OF MICHIGAN

SS.

COUNTY OF JACKSON

Charles Quicksall, being first duly sworn, deposes and says; that he is the Petitioner and Deponent, in the above entitled cause; and respectfully says: that to the best of his knowledge, he believes that his conviction was in violation of legal safeguards which was intended for the protection of all, are things involved that effect his rights to the equal protection of law, as is guaranteed under the Fourteenth Amendment of the United States Constitution and for that reason he submits his case before the bar of the Honorable Justices of this Supreme Court of Michigan, for review of his case and to seek the justice sought to be had in the following particulars, to-wit:

Deponent assumes that he has showing by record and proceedings, in said cause, that there is manifest error. When the Trial Judge of the 9th Judicial Circuit Court sentenced him to Prison for life on a capital offense without the assistance of counsel, on the same day that he was convicted and within the same hour.

Deponent further says he had no counsel to inform him of the nature of the degree to which he was pleading to and that at no time prior to the entering of such plea, did he receive any explanation of the nature of the penalty provided by law, for such offense, and had no knowledge of the effects that his plea of guilty would have on his life and liberty. Had he been informed of the nature of the degree or offense of which he was

charged, Deponent could not, and would not have entered a plea of guilty.

Deponent further says he was not apprised by the trial Court of the fact that he had Constitutional Rights, and that he doesn't have to answer any questions that would involve him in the alleged crime of which he was being tried.

Deponent further says that he was not apprised of the degree or of the fact that if he pleaded guilty to the alleged charge of Murder in the First Degree that he would be sentenced for and during the period of his natural life; and thinks he should have been instructed by the Trial Court of these facts in order that he may know his Constitutional Rights and the degree of the alleged crime placed against him.

Deponent further says that he is not guilty of the alleged offense of Murder in the First Degree as charged in the People's Information and that his plea of guilty was entered through fear and by erroneous belief based upon false promise made to him by the Prosecuting Attorney and the Sheriff that he would receive a sentence of from two (2) to fifteen (15) years for the charge of manslaughter, although Deponent says he was not even guilty of that.

Deponent further says that he was not familiar with such procedure in Court and thought that the Prosecuting Attorney and the Sheriff was trying to help him and was telling him the truth, although the Prosecutor and the Sheriff at the time knowing fully well that Deponent was pleading guilty to an alleged crime which he did not commit and if Deponent had been apprised of the degree of the alleged crime he would have refused to plead guilty before he had the advice of counsel.

Deponent further says that his plea was entered because of misunderstanding, the effect of misrepresentation and that he was denied the right to a jury trial and that he was wrongfully and erroneously convicted of an alleged crime which he never committed.

Deponent further says that there was never any probable cause or least proof established to show that he had committed any alleged shooting, the gun was never produced in Court as evidence nor was there any weapon or gun mentioned in the Information.

Deponent further says that the Circuit Trial Judge of the 9th Judicial Circuit Court of Kalamazoo, Michigan, denied him his rights to be tried by a jury and to a new trial when he has shown questions within the purview of the process of law; questions which have been arbitrarily brushed aside by the trial Judge of the Circuit Court and for which Deponent has served well over ten (10) years of his good life for an alleged crime that he never committed; and therefore his conviction was based upon an unjust Public Prosecution of speedy justice by abridgment of trial.

Deponent further says that he was unable at an earlier date, namely within the time limited for taking an appeal and the same was due to causes beyond his control and not to Deponent's culpable negligence and that granting this application for leave to appeal will serve the ends of justice.

Deponent further says that the sole case and proof is based upon the files and records of this case and is now a matter before the Honorable Justices of this Supreme Court of Michigan to decide upon, by virtue of the above facts and proceedings.

Deponent believes that there is merit in said matter of his cause and reasons and grounds for an application

for leave to appeal herein prayed for and for that reason he files for the relief sought to be had.

Deponent further says that he is cognizant of the above Affidavit and foregoing application for leave to appeal by him subscribed and that the same is true of his own knowledge except as to matters therein stated to be on Information and as to those matters he believes them to be true.

Respectfully submitted,

S/ Charles Quicksall,
Defendant and Appellant.

Sworn to and subscribed to this 18th day of July A. D. 1947.

(SEAL)

S/ John J. Spencer
Notary Public, Acting in and for the County of Jackson, Michigan.

My Commission Expires April 2nd, A. D. 1951.

EXHIBIT "A" — MITTIMUS
(Filed July 16, 1937)

STATE OF MICHIGAN
THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

At a session of the Circuit Court, continued and held at the Court House in the City of Kalamazoo, in said County and State, on Friday the 16th day of July 1937.

Present: Honorable Geo. V. Weimer, Circuit Judge.

THE PEOPLE OF THE STATE OF MICHIGAN,
vs.
CHARLES QUICKSALL,

Charles Quicksall, the Respondent in this cause, having upon his voluntary plea of guilty to the information filed against him in this Court been duly convicted of the crime of MURDER and the Court, before pronouncing sentence upon such plea, being satisfied after such investigation as was deemed necessary for that purpose, — and by private examination of the Respondent respecting the nature of the case and the circumstances of such plea, that the same was made freely and with full knowledge of the nature of said accusation, and without any undue influence, and having been, on motion of the Prosecuting Attorney, brought to the bar of the Court for sentence, and having been asked there

by the Court if he had anything to say why judgment should not be pronounced against him and alleging no reason to the contrary.

And the Court having proceeded by the examination of four witnesses to determine the degree of the crime, and it appearing to the Court from the testimony of such witnesses that the respondent is Guilty of Murder in the First Degree, and the Court having so determined and announced.

Therefore, it is ordered and adjudged, by the said Court now here, that the said Charles Quicksall is Guilty of Murder in the First Degree and that he shall be confined in the State Prison of Southern Michigan at Jackson, Michigan, in solitary confinement, at hard labor and for and during the period of his natural life.

Geo. V. Weimer,
Circuit Judge.

EXHIBIT "B" — INFORMATION

(Filed July 16, 1937)

(TITLE OF COURT AND CAUSE)

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

KALAMAZOO COUNTY) SS.

Paul M. Tedrow, Prosecuting Attorney in and for the County of Kalamazoo aforesaid, for and in behalf of the People of the State of Michigan, comes into said Court, in the April Term thereof, in the year one thousand nine hundred thirty-seven, and gives the Court

here to understand and be informed that Charles Quicksall heretofore, to-wit, on the 2nd day of July, 1937, at the Township of Pavilion, in the County of Kalamazoo aforesaid, feloniously, wilfully and of his malice aforethought, did kill and murder one Grace Parker;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the People of the State of Michigan.

Paul M. Tedrow,
Prosecuting Attorney in and for the
County of Kalamazoo, Michigan.

STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO, The People of the State of Michigan vs. Charles Quicksall. INFORMATION FOR MURDER. Filed this 16th day of July, 1937. Eva M. Westnedge, County Clerk, Paul M. Tedrow, Prosecuting Attorney for the County of Kalamazoo, Michigan.

WITNESSES ENDORSED ON INFORMATION

J. M. Parker, Alice Marie Hawkins, Duane Rupert, Mrs. Jesse Pierce, Mrs. Cora Ketter, Frank Siebel, Dr. Joe P. Gilding, Dr. Horace Cobb, Otto Buder, Charles Conner, Glenn Hammel, Charles Struble, Vern Cairns, Darrell Wicke, Charles Spencer, Raymond Fox, Harry Ryskamp, John Wierather.

EXHIBIT "C" — COMPLAINT
(Filed July 3, 1937)

(TITLE OF COURT AND CAUSE)

IN THE MUNICIPAL COURT OF THE CITY OF KALAMAZOO

STATE OF MICHIGAN
COUNTY OF KALAMAZOO SS.
CITY OF KALAMAZOO

The Complaint and Examination on Oath and in writing of Otto Buder taken and made before me, Gordon L. Stewart, the said Municipal Justice of the City of Kalamazoo, in said County, upon the 3rd day of July, A. D. 1937, who being duly sworn, says that heretofore, to-wit:

On the 2nd day of July, A. D. 1937, at the Township of Pavilion in said County, Charles Quicksall, feloniously, wilfully and of his malice aforethought, did kill and murder one Grace Parker; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the People of the State of Michigan.

Wherefore the said Otto Buder prays that said Charles Quicksall may be apprehended and held to answer this Complaint, and further dealt with in relation to the same as law and justice may require.

C. C. Buder

TAKEN, Subscribed and sworn to before me, on the day and year first above written.

G. L. Stewart,
Municipal Justice.

Case No. S-16433 The Municipal Justice Court of the City of Kalamazoo. The People vs. Charles Quicksall. COMPLAINT. Filed July 3, 1937 Frederick J. Mills, Clerk Municipal Justice Court, Kalamazoo.

EXHIBIT "D" — WARRANT

(Filed and Returned July 15, 1937)

(TITLE OF COURT AND CAUSE)

IN THE MUNICIPAL JUSTICE COURT OF THE CITY OF KALAMAZOO

STATE OF MICHIGAN
COUNTY OF KALAMAZOO SS.
CITY OF KALAMAZOO

To the Sheriff or any Constable of said County, the Chief of Police of the City of Kalamazoo, or any Police Officer of said City, GREETINGS:

Whereas Otto Buder has this day made complaint in writing and upon oath before me, the said Municipal Justice of the City of Kalamazoo, in said County, that heretofore, to-wit:

On the 2nd day of July, A. D. 1937 at the Township of Pavilion in said County Charles Quicksall, feloniously, wilfully and of his malice aforethought, did kill and murder one Grace Parker; contrary to the form of the

statute in such case made and provided; and against the peace and dignity of the People of the State of Michigan.

And Whereas, on examination, on oath of the said Otto Buder by me, the said Municipal Justice, it appears to me, the said Municipal Justice, that said offense has been committed, and that there is just cause to suspect, the said Charles Quicksall, to have been guilty thereof,

in the name of the People of the State of Michigan, you and each of you, are hereby commanded forthwith to arrest the said Charles Quicksall, and bring him before me, the said Municipal Justice, to be dealt with according to law.

Given under my hand, and seal of said Municipal Justice Court, at the City of Kalamazoo, in said County, on the 3rd day of July, A. D. 1937.

(SEAL)

G. L. Stewart,
Municipal Justice.

Case No. S-16433. The Municipal Justice Court of the City of Kalamazoo. The People vs. Charles Quicksall. WARRANT. By Virtue of this warrant, to me directed, I have taken the within named person whom I have before the Municipal Justice within named as I am within commanded. Dated this 15th day of July, A. D. 1937. Otto Buder, Clerk. Returned and Filed July 15, 1937.

EXHIBIT "E" — JUSTICE'S RETURN FROM MUNICIPAL COURT

(Filed July 16, 1937)

(TITLE OF COURT AND CAUSE)

IN THE MUNICIPAL JUSTICE COURT OF THE CITY OF KALAMAZOO

STATE OF MICHIGAN }
} SS.
COUNTY OF KALAMAZOO }

I, the undersigned Gordon L. Stewart, Municipal Justice of the City of Kalamazoo, in said County do hereby certify and return to the Circuit Court, in and for the said County of Kalamazoo, that the complaint in writing and upon the oath of Otto Buder (which complaint is hereto annexed), was duly taken and made before me, the said Municipal Justice, at my office in the said City of Kalamazoo on the 3rd day of July A. D. 1937; that before issuing a warrant he was orally examined by me in relation to the matters set forth in said complaint, that his testimony was not reduced to writing, and that it appearing to me, the said Municipal Justice, that the offense charged in said complaint, and hereinafter fully set forth, had been committed, and that there was just cause to suspect Charles Quicksall to be guilty thereof, I, the said Municipal Justice, did thereupon, on the same day issue the warrant, (which is hereto annexed), for the arrest of the said Chas. Quicksall in which complaint and warrant and said accused person was charged with having committed the following offense:— That heretofore, to-wit: on the 2nd day of July, A. D. 1937, at the Township of Pavilion in said County Charles Quick-

sall, feloniously, wilfully and of his malice aforethought, did kill and murder one Grace Parker; contrary to the form of the statute in such case made and provided; Contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Michigan.

The accused person was duly arrested by virtue of said warrant, and brought before me, the said Municipal Justice, at the Municipal Justice Court in the said City of Kalamazoo, in said County of Kalamazoo, on the 15th day of July A. D. 1937, that the charge made against said accused person as contained in said complaint and warrant, as above set forth, was duly and distinctly read to me, the said Municipal Justice, to said accused person and that thereupon his rights in the premises were duly explained to him by me, the said Municipal Justice. The said accused person expressly waived examination as to the matters and things as charged in said complaint and warrant.

And whereas, it was made to appear to me, the said Municipal Justice, that said offense was committed as charged in said complaint and warrant, and there was probable cause to believe said accused person to have been guilty thereof, I, the said Municipal Justice, thereupon, on the 15th day of July A. D. 1937, I ordered the appearance of said accused person for trial at the session of Circuit Court to be held in and for said County of Kalamazoo, on the 15th day of July, A. D. 1937, forthwith in the forenoon at the Court House in the City of Kalamazoo, in said County, then and there to answer to such information as might be filed against said accused person for said offense, and in default thereof that he be committed to the County Jail of the said County of Kalamazoo until said session of the Circuit Court for

said County and until he should be thence delivered by due process of law.

And I further certify and return * * * nothing.

Given under my hand and the seal of said Municipal Justice Court, at the City of Kalamazoo, in said County, this 15th day of July A. D. 1937.

(SEAL) G. L. Stewart,
Municipal Justice.

Case No. 16433 The Municipal Justice Court of the City of Kalamazoo. The People vs. Charles Quicksall. Offense Charged Murder. Return to Circuit Court for the County of Kalamazoo. Filed this 16th day of July, A. D. 1937, Eva M. Westnedge, Clerk of Circuit Court for Kalamazoo County.

EXHIBIT "F" — ARRAIGNMENT
(Filed July 16th, 1937)

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

Entered Friday, July 16th A. D. 1937.

The Court was opened for business in due form.

Present: Hon. Geo. V. Weimer, Circuit Judge.

THE PEOPLE OF THE STATE OF MICHIGAN,

vs.

CHARLES QUICKSALL,

INFORMATION FOR MURDER

Charles Quicksall, the Respondent in this cause, having been duly arraigned at the bar, in open court and the information being read to him by Paul M. Tedrow, Prosecuting Attorney, pleaded thereto, GUILTY, and after an examination of Respondent, said plea was accepted by the Court.

Read, approved and signed:

Geo. V. Weimer,
Circuit Judge.

Attest: Eva M. Westnedge,
Clerk.

EXHIBIT "G" — CONVICTION
(Filed July 16, 1937)

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

Entered Friday, July 16th, A. D. 1937.

The Court was opened for business in due form.

Present: Hon. Geo. V. Weimer, Circuit Judge.

THE PEOPLE OF THE STATE OF MICHIGAN,
vs.
CHARLES QUICKSALL,

In this cause, the respondent having been arraigned on the information charging him with Murder, and having pleaded guilty thereof and said plea of guilty having been accepted by the Court, after an exhaustive interview with the respondent both in open Court and at chambers, and the Court having proceeded with an examination of witnesses to determine the degree of the crime, after hearing the testimony of the witnesses Horace Cobb, Jesse Pierce, Cora Ketter and Charles Conner, and the testimony of the respondent himself, unsworn, regarding the circumstances of this crime, and it appearing from the testimony of such witnesses and from the statement of the respondent that the killing was deliberate and premeditated, and under the

testimony of the respondent himself that it was in pursuance of a suicide pact, so-called, the Court finds and determines that respondent is guilty of murder in the first degree, and it is, therefore, ordered and adjudged that respondent be and he is guilty of Murder in the First Degree.

Read, approved and signed

Geo. V. Weimer,
Circuit Judge.

Attest: Eva Westnedge,
Clerk.

EXHIBIT "I" — JUDGE'S ORDER DENYING MOTION AND MEMORANDUM

(Filed May 13th, 1937)

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

THE PEOPLE,
vs.
CHARLES QUICKSALL,
Defendant.

To the Clerk of this Court:

An order may be entered denying the motion of the Defendant, Charles Quicksall, for leave to file a delayed motion to vacate judgment and sentence and for a new trial.

A statement of the reasons for this order has been dictated to Mr. Ford R. Wilber, Official Court Stenographer, as a part of the record.

Dated May 13, 1947.

S/ Geo. V. Weimer,
Circuit Judge.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

THE PEOPLE OF THE STATE
OF MICHIGAN,
vs.
CHARLES QUICKSALL,
Defendant.

Before HON. GEORGE V. WEIMER, Circuit Judge, at Kalamazoo, Michigan, Tuesday P. M. May 13, 1947.

MEMORANDUM

On July 3, 1937 a warrant was issued by the Municipal Justice of Kalamazoo, charging this defendant with murder of Grace Parker in Pavilion Township, this County. The Testimony taken upon the plea of guilty showed that the homicide was committed in her home while her husband was absent.

On July 3rd Defendant was in Bronson Hospital recovering from a gunshot wound, self inflicted at the same time that he shot and killed Grace Parker in pursuance of a suicide pact, after both had consumed a considerable quantity of beer, and after Mrs. Parker had persuaded her young daughter to go to one of the neighbors so that she and the Defendant might be alone.

During the several days of Defendant's confinement in the hospital, Sheriff Struble provided guards in his room on eight hour shifts. One of those guards was Harry Ryskamp, now a Deputy Sheriff and Court Officer. On July 3rd Defendant said to Mr. Ryskamp: "How long will I have to lay here? I wish to Christ it had taken effect on me like it did on her. If I get over this, it will mean life for me anyway." Ryskamp asked him what brought it all on. His reply was: "I don't know. We were just sitting there drinking beer." He then asked Defendant if it was agreed that they should die together. His answer was "Yes". What time did she die? Mr. Ryskamp immediately made notes of his talk with Defendant, signed them and placed them in the Sheriff's file, where they have been all these years and are now.

On July 15, 1937, Defendant having been removed from the hospital, was taken into Municipal Justice Court. The return of the Justice shows that his rights were explained to him, and that he expressly waived examination, and was held to appear in the Circuit Court forthwith without bail.

On July 16th Defendant was arraigned in this Court, and, after exhaustive interview with him, both in open court and at chambers, a formal order was entered accepting his plea. Defendant was then forty-four years of age; had theretofore been twice married and divorced,

and served two prison terms for separate and distinct felonies.

Immediately upon the entrance of the order accepting his plea of guilty, the following record was made:

> THE COURT: The record may show that this respondent has just offered to plead guilty and has pleaded guilty to a charge of murder; that after a full statement by the respondent in response to numerous questions by the Court in open Court, and after a private interview with respondent at chambers in both of which he has freely and frankly discussed the details of this homicide as claimed by him, the Court being clearly satisfied that the plea of guilty is made freely, understandingly and voluntarily, an order has been entered accepting such a plea of guilty. It now becomes necessary for the Court to proceed now with the examination of witnesses, as requires by the statute, to determine the degree of the crime and to render judgment accordingly. You may preceed.

Horace R. Cobb, physician and coroner, Jessie Pierce and Cora Ketter, neighbors, and Charles Conner, Deputy Sheriff, were sworn and testified. Their testimony has not been transcribed, but should be transcribed and inserted at this point and considered as a part of the record and of these findings if and when an appeal shall be taken from the order made herein.

At the close of the testimony of the four witnesses the Court said: "All right, Quicksall, you may stand," and then followed questions by the Court and the answers by the Defendant and the findings and the order the Defendant was guilty of first degree murder and, finally, the sentence. The Court found, ordered and adjudged as follows:

THE COURT: In this case the respondent having been arraigned on the information charging him with murder, and having pleaded guilty thereto, and said plea of guilty having been accepted by the Court after an exhaustive interview with the respondent both in open court and at chambers, and the Court having proceeded with an examination of witnesses to determine the degree of the crime, after hearing the testimony of the witnesses, Horace Cobb, Jessie Pierce, Cora Ketter and Charles Conner and the testimony of the respondent himself, unsworn regarding the circumstances of this crime, and it appearing from the testimony of such witnesses and from the statement of the respondent that the killing was deliberate and premeditated, and under the testimony of the respondent himself that it was in pursuance of a suicide pact, so-called, the Court finds and determines that the respondent is guilty of murder in the first degree, and it is therefore ordered and adjudged that respondent be and he is guilty of murder in the first degree. You are convicted by your plea of guilty of murder and by the determination of the Court of murder in the first degree, have you anything to say before sentence?

RESPONDENT: No, sir.

A record was made by Mr. Ford R. Wilber, the Court Stenogapher of all of the questions by the Court and Defendant's answers thereto and a transcript thereof is on file and at this point should be inserted in and considered a part of these findings. A record was made by the Court stenographer of the testimony of the four witnesses, but not transcribed. It should be transcribed and included in these findings if and when an appeal shall be taken.

On April 18, 1947 Defendant filed his motion in his own behalf for leave to file a delayed motion to vacate judgment and sentence and for a new trial and a proposed motion for all of that relief. At his request he was brought here for the hearing on May 9th. A record was made of the proceedings. A transcript of that record should be inserted herein at this point.

He expressly denied any desire for an attorney at this time. He claims in his motion that the sheriff and Prosecuting Attorney denied him an opportunity to get an attorney before he was arraigned in this Court July 16, 1937.

Charles Struble, the Sheriff in 1937, as a witness upon the hearing of this motion, denied that claim in its entirety. Paul M. Tedrow, Prosecuting Attorney in 1937, was hopelessly stricken about three months ago and is unable to leave his bed or to talk. Harry Ryskamp, a guard at the hospital, testified upon the hearing of the motion, as already stated herein, that Defendant well realized that he was guilty of murder and that he would be sentenced for life.

No reasonable excuse is offered for the delay of ten years in filing this motion. Even now Defendant offers no denial of having killed Mrs. Parker. The proposed motion to vacate judgment has no merit.

Having in mind the decision of the United States Supreme Court reversing the Michigan Supreme Court in People vs. DeMeerleer, it cannot be seriously urged that this Defendant did not understand the consequences of his plea of guilty. Neither can it be said that there was any confusion in his mind. His answers to the Court's questions dispose of that. The charge of murder is serious indeed, but there is nothing complicated about killing a woman by gunshot.

An order will this day be entered denying the motion of the defendant for leave to file a delayed motion to vacate judgment and sentence and for a new trial.

MOTION FOR LEAVE TO FILE MOTION FOR NEW TRIAL

(Filed April 18th, 1947)

(TITLE OF COURT AND CAUSE)

Now comes Charles Quicksall, Respondent, acting in his own behalf and in proper Person, and moves the Honorable Court for leave to file motion for an order setting aside the conviction and vacating the sentence and judgment heretofore imposed, so that a new trial may be granted because, in the record and proceedings, in said cause there is manifest error, which Respondent alleges as reasons and grounds for a new trial in the following particulars: —

(A)

Because the Respondent is not guilty of the alleged offense charged against him, either in law or in fact; and is submitted the Honorable Trial Court wherein the Respondent was tried automatically lost jurisdiction through error.

(B)

Because the Respondent in this cause was denied the right to assistance of counsel, that his plea was entered because of misunderstanding, through the effect of misrepresentation.

(C)

Because the respondent was denied his Constitutional Rights of the Equal Protection of the Laws as guaranteed by both the State and Federal Constitutions through the Fourteenth Amendment as is more specifically set forth as follows: —

1. Because the Respondent was denied the right by the Sheriff and the Prosecuting Attorney while held in Custody, his right to the use of a telephone.

2. Because the respondent was further denied the right to consult with his counsel, his family or friends or relatives.

3. Because the Sheriff and the Prosecuting Attorney prevented the Respondent from being accorded his Constitutional Rights and for this reason, the judgment should be vacated and set aside and the Respondent should be given an opportunity to plead anew.

(D)

Because such judgment is invalid because, obtained in violation of Procedural guarantees protection against State invasion through the Fourteenth Amendment.

Because the Respondent was unable at an earlier date, namely, within thirty (30) days after trial date, to file a motion for a new trial and the same was due to causes beyond his control and not to the Respondent's culpable negligence and that granting to leave to move for a new trial will serve the ends of justice.

The Court is requested to file it's decision on this motion in writing within ten days after hearing, same to be entered on file and made a part of the Record.

This motion is based upon the Records and Files in this cause and upon the affidavit of Charles Quicksall, said Respondent, hereto attached.

Respectfully submitted,

(s) Charles Quicksall,
Respondent.
In Proper Person.

AFFIDAVIT

(Filed April 18, 1947)

STATE OF MICHIGAN
SS.
COUNTY OF JACKSON

Charles Quicksall, being first duly sworn, deposes and says; that he is the Respondent in the above entitled cause; and respectfully says that, in the records and proceedings, in said cause, there is manifest error, which Respondent alleges as reasons and grounds, for a new trial, that he is now held in custody, under a certain Mittimus, issued by the Honorable Geo. V. Weimer, Judge of the Circuit Court for said County of Kalamazoo, Michigan, a copy of the Mittimus is annexed hereto and made a part hereof and marked Exhibit "A" on the following grounds, to-wit:

Deponent says; that he is Not Guilty of the alleged offense of murder in the first degree as charged in the People's Information, either in law or in fact, Deponent will show by record that on July 16th, 1937 he was convicted and sentenced by the Honorable Geo. V. Weimer, Judge of the said Court, upon a conviction rendered for an alleged crime of murder in the First Degree and

therefore committed to a term of imprisonment for and during the period of his natural life to the State's Prison of Southern Michigan at Jackson, Michigan, under the above Mittimus, EXHIBIT "A".

Deponent further says that he was questioned by the sheriff and the Prosecuting Attorney, and that he did not voluntarily plead to the information filed against him by the Prosecuting Attorney, Mr. Paul M. Tedrow, charging him with the alleged crime of murder in the First Degree, therefore upon discussion of questions by the above Sheriff and Prosecuting Attorney, Deponent definitely stated that he was not guilty of the alleged crime charged against him.

Deponent further says that several times while he was held in custody he tried to use the telephone to consult with his friends or relatives to obtain the assistance of Counsel but was refused this right and was advised by the Sheriff and the Prosecuting Attorney that he could not have the assistance of Counsel nor could he have any visits until he had been to Court.

Deponent further says: that he was advised by the Sheriff and the Prosecuting Attorney that he had better plead guilty to the charge of *Manslaughter*, and that *he the Prosecuting Attorney would see that Deponent would receive a sentence of from two* (2) *to fifteen years* (15).

Deponent further says that the Prosecutor also informed him that his life was in great danger and that he the Prosecutor and the deputy in charge of the Hospital had a hard time from keeping the husband of the woman who he had shot from coming in the Hospital and throwing acid in the Deponent's face. Deponent says although he was not guilty of the alleged shooting but affected with fear; and feeling that the Prosecutor and the Sheriff was trying to help him, De-

ponent was not familiar with such procedure in Court and thought that the Prosecutor, was telling him the truth although both the Prosecutor and the Sheriff at that time knowing fully fell that deponent was pleading guilty to an alleged crime which he did not commit, and for which he did not intend to plead guilty to.

Deponent further says: that the following morning of July 15th, 1937, the Deputy came over to the Hospital and moved him to the County Jail and later upon the same day the Deputy took him before the Municipal Court where examination was waived; the next day of July 16th, 1937, he was taken before the Judge of the Circuit Court and the Prosecutor said, "Your Honor, Charley wants to plead guilty and get this over with," the Court accepted the said plea and in less than an hour the Deponent was tried, convicted and sentenced to life imprisonment. This all happened on the same day and within the same day.

Deponent further says: that he was not informed by the Sheriff and the Prosecutor that if he entered a plea of guilty he would be sentenced to life imprisonment for the alleged crime of murder in the First Degree and if deponent had known that he was being charged with an alleged crime that he did not commit, he would have refused to plead guilty or answer any questions that were propounded to him by the Sheriff or the Prosecutor, before he had the advice of Counsel.

Deponent further says: that his plea of guilty was caused by fear and by erroneous belief based upon a false promise, made to him by the Sheriff and the Prosecutor and that his plea was entered because of misunderstanding, the effect of misrepresentation.

Deponent further says: that having before him the complete record of Court Procedure in this cause, and having devoted much of his time to the study of records

and laws relative to his case, it is the sole belief of this Deponent according to his findings, that he was wrongfully and erroneously convicted of an alleged crime which he never committed, and was informed through the effect of misrepresentation through the Sheriff of the Prosecutor that he was supposed to be pleading guilty of Manslaughter, and not murder in the First Degree.

Deponent further says: that he is *not guilty* of the alleged crime of murder in the First Degree and the sole and germane question before this Honorable Court is by virtue of the above and foregoing proceedings and is submitted to be wholly established, that failure of the Honorable Trial Court to compel the Prosecuting Attorney to accord the Deponent with the priviledge of being properly charged, or indicted, placed the Deponent in an unjust position where he was subjected to hasty, malicious and oppressive Public Prosecution.

Deponent comes now to this Honorable Court, in search of the justice sought to be had, and to uphold the Constitution and laws of the United States, in connection with this cause, if this conviction is upheld, Deponent would suffer irreparable injury; he would be subjected to serious injustices and divested of his right to due and orderly process of the law of this State and Nation.

Deponent further says: that all of the above and foregoing facts is now a matter before this Honorable Court to decide upon, whether the facts as charged are sufficient to support the conviction of this Deponent.

Deponent further says: that upon his committment to the State Prison of Southern Michigan at Jackson, Michigan, he did then and there attempt to secure assistance for the purpose of taking appeal, to secure Leave to move for a wrongful and erroneous conviction as aforesaid; that it was necessary for him to secure a

transcript of the complete record of the case, which took considerable time; that upon securing the proof and records which he needed; he by correspondence; had to segure assistance, which he could only do by correspondence; that being without funds, he had to make arraignments, so that money would be available to him for the purpose of prosecuting an appeal or to secure leave to move for a new trial.

Deponent further says; that it was not until now that he was able to secure the assistance satisfactory to him and make arraignments for the purpose of prosecuting a delayed appeal, or to secure leave to move for a new trial.

Deponent further says: that he was wrongfully and erroneously convicted and that granting of a delayed appeal, to secure leave to move for a new trial will serve the ends of justice. Deponent further saith not.

Deponent further says; that he is cognizant of the above affidavit and the foregoing motion by him subscribed and that the same is true of his own knowledge except as to matters therein stated to be on information and as to those matters he believes them to be true.

Respectfully submitted,

(S) Charles Quicksall,
Deponent.

Sworn to and subscribed to this 16th day of April, A. D. 1947.

(S) John J. Spencer,
(SEAL) Notary Public.

My commission expires 4-3, A. D. 1951.

CLERK'S CERTIFICATE

STATE OF MICHIGAN

SS.

COUNTY OF KALAMAZOO

I, Anthony Stamm, Clerk of said County and of the Circuit Court of Kalamazoo, Michigan, do hereby certify that the foregoing record is correctly taken and copied from the original record in the case of People vs. Charles Quicksall, File No. 6-519, Now remaining in my office and of record in said Court, and that the same has been examined and compared by me with the original record.

In testimony Whereof, I have hereunto set my hand and affixed the seal of the said Circuit Court of said County, this ..... day of ..... A. D. 194.....

(SEAL) Anthony Stamm, Clerk.

Philip Hassing, Deputy Clerk.

CERTIFICATE OF THE COURT

STATE OF MICHIGAN
IN THE SUPREME COURT

APPEAL FROM THE 9TH JUDICIAL CIRCUIT FOR THE CITY OF KALAMAZOO, MICHIGAN

Honorable George V. Weimer, Circuit Judge

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

vs.

CHARLES QUICKSALL,
Defendant and Appellant.

I, George V. Weimer, Judge of the 9th Judicial Circuit Court, hereby certify that the foregoing settled case constitutes all the proceedings had in said cause and the whole of the same except a transcript of testimony mentioned in my order denying leave to appeal and that after due notice I have settled, signed and certified the same on the 6th day of February A. D. 1948, after due notice to all parties concerned.

(S) Geo. V. Weimer,
Circuit Judge.

GEORGE V. WEIMER
Circuit Judge
Kalamazoo, Michigan

February 6, 1948.

Charles Quicksall, No. 40,086,
4000 Cooper St.,
Jackson, Michigan.

Dear Sir:

In reply to your letter received today I have signed the certificate attached to your proposed record on appeal, but have noted therein an exception that the record does not contain a transcript of the testimony taken before your plea of guilty was accepted.

You have a transcript of my memorandum filed when your motion for leave to appeal was denied, and in that memorandum I made it very clear that a transcript of your testimony and that of the four witnesses should be included in the record upon appeal. You have not done that.

The Supreme Court is entitled to an entire record, and before you have it printed you should obtain a transcript of all the testimony and include it in the record.

Yours truly,

Geo V. Weimer.

PRAECIPE — NOTICE TO ALL PARTIES CONCERNED — PROOF OF SERVICE — NOTICE TO HIS HONOR

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

In the Matter of
CHARLES QUICKSALL, Case No. 6-519
Defendant and Appellant.

To: The Honorable George V. Weimer, Judge of the 9th Judicial Circuit Court and to Esq. Robert Barber, Prosecuting Attorney, of Kalamazoo, Michigan.

PRAECIPE

TO: Mr. Anthony Stamm, Clerk of the Circuit Court, for County of Kalamazoo, Michigan.

Sir:

Please present this Notice before the Honorable George V. Weimer, Judge of the said Court in his Chambers at the County Court Building in the City of Kalamazoo, Michigan on the 26th day of November, A. D. 1947, at 10:00 o'clock in the forenoon of said day, or as soon thereafter as the same may be heard.

Charles Quicksall,
Defendant and Appellant.

NOTICE TO ALL PARTIES CONCERNED

May it please all parties concerned in this matter of appeal to be informed that if there is any additional testimony or record to be entered at this particular point of the procedure then please ~~forward same~~ at my expense if cost is required; within 15 days from the above date.

Said documents being mailed by United States Registered Mail, under register No. 41502 — Stamm and 41501 — Barber and requesting a return receipt for proof of the delivery of same.

Respectfully submitted,

Charles Quicksall,
Defendant and Appellant.

Mailed Nov. 19, 1947.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

In the Matter of
CHARLES QUICKSALL, Case No. 6-519
Defendant and Appellant.

To the Honorable George V. Weimer, Judge of the 9th Judicial Circuit Court and in his chambers at the County Court Building in the City of Kalamazoo, Michi-

gan on this ..... day of ..... A. D. 1947, at ..... o'clock in the forenoon of said day.

Now comes Charles Quicksall, Defendant and Appellant in Proper Person acting in his own behalf in the matter pertaining to his appeal, and says at this time he wishes to inform the Court that he is only a layman and has tried to the best of his ability to proceed and protect his appeal now pending in the Michigan Supreme Court and to which substantial justice requires that I be granted in due time.

Should your Honor be satisfied that an agreeable settlement has been made with the Court on the record now filed with the Clerk of the Supreme Court, and should your Honor be satisfied that the record therein contained is a full and complete record of all proceedings necessary for a full understanding of question of law as set out in the reasons and grounds for appeal, then it will not be deemed necessary for further settlement unless the Court has some additional matter of record to be entered at this particular point of the procedure. If no additional record is forwarded to me within 15 days from the time your Honor takes notice of this matter, then I shall know my records are complete and I shall proceed on with my appeal which I have so long sought and prayed for.

Respectfully submitted,

Charles Quicksall,
Defendant and Appellant.

PROCEEDINGS UPON MOTION FOR LEAVE TO FILE FOR NEW TRIAL

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

THE PEOPLE OF THE STATE OF MICHIGAN,

vs.

CHARLES QUICKSALL,
Defendant.

Before HON. GEORGE V. WEIMER, Circuit Judge, at Kalamazoo, Michigan, Friday A. M. May 9, 1947.

Appearance:

Mr. Robert J. Barber, Prosecuting Attorney, For the People.

Charles Quicksall, In Pro. Per.

THE COURT: You have filed a motion for leave to file a motion for a new trial.

DEFENDANT: That is right, your Honor.

THE COURT: To vacate the judgment, the plea of guilty and for a new trial, and at your instance you have been brought here. Today was set for the hearing of your motion and you have been brought here from Jackson to attend the hearing. Are you ready to proceed?

DEFENDANT: I am, your Honor.

THE COURT: Have you a lawyer?

DEFENDANT: No, I haven't, sir.

THE COURT: Do you expect to have a lawyer?

DEFENDANT: Well, your Honor, it took me a long time to prepare the motion, and I figure that I would be just as well qualified to present it myself.

THE COURT: You have no desire to have a lawyer attend you at this time, then?

DEFENDANT: No sir, I don't.

THE COURT: Some lawyer at the institution prepared these papers for you, didn't they?

DEFENDANT: There was a man there. He has gone.

THE COURT: He isn't there now?

DEFENDANT: He has gone but he helped me quite a bit.

THE COURT: He is a lawyer, of course?

DEFENDANT: He was, yes, sir.

THE COURT: You don't care to tell us who he is?

DEFENDANT: His name is Baker.

THE COURT: He isn't there now?

DEFENDANT: No, he has gone home.

THE COURT: Where is his home, — Detroit?

DEFENDANT: I presume so.

THE COUPT: The papers seem identical with those in other cases that have come here. All right. Do you want to rest your motion on the petition that you filed or you want to testify or you want to be heard without testifying?

DEFENDANT: I believe that that motion of mine — I rely mostly on the motion because of facts is there, from all of it.

THE COURT: Do you want to proceed to make a statement, or do you want to just let your motion — submit your motion on the file that is here?

DEFENDANT: I can make a statement, your Honor.

THE COURT: All right make a statement, if you care to.

DEFENDANT: Well, in the first place, I wasn't guilty of the crime that I was charged with, of first degree murder. I was under the impression when I pleaded guilty that I was to plead guilty to manslaughter. That was what was promised me in the hospital at the time I was there, and if I had knew I was going to be charged with the crime of first degree murder, I sure never would have pleaded guilty.

Defendant made answer to questions propounded to him by the Court as follows:

Q. You say you were assured at the hospital?

A. I was promised.

Q. Who promised you?

A. The Prosecuting Attorney, Mr. Paul Tedrow.

Q. And the sheriff, Charles Struble, when they came in the hospital?

A. They wanted to know how it happened, and I told them I didn't really know myself because it was an accident that just couldn't be avoided. He says "There was no accident." He says "You shot her." I says "I never shot anybody." I says "I never even had hold of the gun; how could I shoot anybody?" They says "You are guilty."

Q. Do you know where Mr. Struble is? You want to phone downstairs and see if he is there?

A. Then he tell me — the Prosecutor and he both tells me that they had such an awful hard time of keep-

ing Mr. Parker from coming in and throwing acid on me, and naturally they put more fear into me than what it was, lying there with a bullet in me, pretty sick, so when they said if I would consent to plead guilty to manslaughter that they would see that I wouldn't get more than two years — or less than two years or more than fifteen, I figured that would be the best way out and consented. When I got into Court Mr. Tedrow — he pleaded guilty for me. I never opened my mouth, but I still under the impression that I was getting charged with manslaughter until the Court read off the sentence.

Q. Well, do you know that Mr. Tedrow now is hopelessly stricken with paralysis and not able to talk and not able to —

A. (Interrupting): No, I don't, your Honor. That is the first I never knew that.

Q. You hadn't heard about it?

A. No, sir.

Q. You didn't know that for months now, two or three — three or four months he has been utterly helpless for a stroke of paralysis.

A. No, sir. That the truth; I never heard of it.

Q. His power of speech is gone and he can't talk. He is bedridden. You didn't know that.

A. I did not, your Honor.

Q. Anything else you want to say?

A. Well, I just can't remember right now.

Q. You were taken into Municipal Court first?

A. That is true, your Honor.

Q. Do you remember that?

A. I waived examination in Municipal Court.

Q. And you knew that you were charged with murder?

A. Yes, but, your Honor, when they came to the hospital —

Q. (Interrupting): I say you knew that, that you were charged with murder?

A. At that time.

Q. The warrant was read to you in Justice Court?

A. It was read to me there and I waived examination.

Q. On a murder charge?

A. That is true.

Q. You knew you were bound over to this Court on a charge of murder?

A. That is true.

Q. And when you appeared in this Court the information was read to you stating that you were charged with murder?

A. I never even heard the Prosecutor mention the charge of murder, your Honor.

Q. Don't you remember that in this Court the Prosecuting Attorney Mr. Tedrow, stated to you the substance of the information, the written information filed and signed by him, which charged that you Charles Quicksall then, theretofore, to-wit: on the 2nd day of July A. D. 1937, at the Township of Pavilion, County of Kalamazoo, feloniously, wilfully and of his malice aforethought, did kill and murder one Grace Parker. That was read to you right here in this Court, wasn't it?

A. Your Honor, at the time I came into this Court —

Q. (Interrupting): Wasn't that read to you?

A. I am sure I don't really know. I am telling you the honest truth. I came out of the hospital right to the county jail and from there to the Municipal Court and from there up here. I was very sick when I came into your court room.

Q. You were into the Municipal Court one day and in this Court the following day.

Q. And the following day you came into this Court and you knew you were charged with murder, didn't you?

A. That is right.

Q. Did you at any time in this Court suggest to the Court that you wanted an opportunity to talk to a lawyer?

A. I don't believe I ever did, your Honor. An attorney was never mentioned to me. I was never asked if I needed one. Even when I was in the hospital, I asked them. I asked them if I could have somebody call up for me. He says he wasn't allowed to let anyone in to visit me, talk to me or use the telephone.

Q. At the hospital?

A. At the hospital.

Q. Who was that?

A. The deputy sheriff.

Q. Who was it?

A. I don't know his name. This gentleman here was on in the evening, but I don't recall who the man was in the day time.

Q. Mr. Ryskamp was on in the evening?

A. Yes, sir.

Q. How many hours, — eight hours?

A. I couldn't say. I was asleep most of the time. They give me shots to put me to sleep. I couldn't call anybody.

Q. Well, you weren't asleep when you were in this Court?

A. I was very sick, your Honor. I was probably not asleep, but very sick.

Q. You talked with me at considerable length here in the Court Room?

A. I remember. I recall talking to you, but I couldn't recall what we was talking about.

Q. We were not in this building at that time?

A. I don't think we were. I don't think so.

Q. You remember where we were?

A. It seems to me we were in the Post Office Building, wasn't it?

Q. The City Hall across the park?

A. The City Hall.

Q. Across the park over there while this building was being built, is that right?

A. I believe that is right.

Q. You remember talking with me in the Court room over there?

A. I do.

Q. And you remember talking with me in my office with the door closed over there?

A. I do not, your Honor.

Q. You don't remember that?

A. I do not.

Q. Well, you remember coming back into the Court Room and a long conversation took place between you and me, a copy of which you have had made and filed here? You have seen them?

A. I have.

Q. Who were the deputies that guarded you at the hospital besides Mr. Ryskamp?

A. I didn't — I never heard the other man's name. He was a little short fellow. That is the only thing I know.

Q. Do you remember hearing me say this in Court the morning of July 16th: "The record may show that this respondent has just offered to plead guilty to a charge of murder; that after a full statement by the respondent in response to numerous questions by the

Court in open Court and after a private interview with respondent at chambers, in both of which he has freely and frankly discussed the details of this homicide as claimed by him, the Court being clearly satisfied that the plea of guilty is made freely, understandingly and voluntarily, an order has been entered accepting such plea of guilty. It now becomes necessary for the Court to proceed with the examination of witnesses, as required by the statute, to determine the degree of the crime and to render judgment accordingly". You remember all that?

A. I remember part of it, your Honor.

Q. Then you remember that we did then proceed to examine Horace Cobb, a doctor and coroner; you remember that?

A. I do.

Q. And Jessie Pierce?

A. I do.

Q. And Cora Ketter?

A. Yes, sir.

Q. And Charles Conner, a deputy sheriff. You remember that we proceeded to take a sworn testimony of those four witnesses?

A. I remember three. I don't remember the fourth one.

Q. Do you remember in a general way what they testified to?

A. I don't believe I do.

Q. Who was Jessie Pierce?

A. Jessie Pierce was a next door neighbor to Mrs. Pierce.

Q. To the woman that was shot?

A. That is true.

Q. And killed?

A. That is true.

Q. You were there, of course, when she was shot?

A. I was there.

Q. You don't deny that now?

A. No, I never did deny I wasn't there.

Q. You and she were there alone together?

A. She asked Mrs. Pierce to go home; that she had something she wanted to tell me.

Q. You and the woman that you shot and killed were there alone?

A. We were there alone.

Q. There never was any question about that?

A. There never was that I heard.

Q. Then after we took the testimony of Doctor Cobb, the coroner —

A. True.

Q. And Jessie Pierce — who was Cora Ketter?

A. Mrs. Ketter was four doors from Mrs. Parker?

Q. You heard her testimony?

A. I remember her coming on the stand, but I don't recall her testimony.

Q. You don't recall Charles Conner.

A. No.

Q. You remember the Court proceeded with this: "All right, Quicksall, you may stand up." You remember that?

A. Yes.

Q. And then the Court proceeded to ask you questions and you answered those questions, almost four typewritten sheets which you have and typewritten and filed here. You have read those over?

A. I read those over.

Q. You remember all that?

A. I don't remember. I cannot recall the Court asking me those questions. I recall a great many of those questions asked me in the hospital.

Q. Don't you remember the Court asked you this question: "You have just heard the testimony of the four witnesses, Doctor Cobb, Mrs. Jessie Pierce, Mrs. Cora Ketter, and Deputy Charles Conner?

A. Yes, sir.

A. I heard them, yes, sir.

Q. You did hear Charles Conner's testimony?

A. I heard his name mentioned, your Honor, but I didn't see him on the witness stand.

Q. Then you remember the Court asking you: "Have you any comment to make upon any of that testimony? A. No." You remember saying you had no comment to make?

A. I didn't have an comment, your Honor, to anything.

Q. Do you remember this long question: "When you were arraigned this morning and pleaded guilty and you plea was accepted, in the talk that was had between the Court and you here in open Court, and in the talk that I had with you privately in chambers, it is my recollection that you said in substance the following, and I am going to repeat what I recall you said to me: That you were born in Mansfield, Ohio, in 1893; left school in the eighth grade at the age of sixteen; that you had been a laborer and a cook most of your adult life; that you lived in the home of Mr. and Mrs. Parker in Toledo before coming to Kalamazoo; that they moved to Kalamazoo in 1935, and that you came here with them; is that right? A. Yes sir". You remember that long question being stated to you?

A. I do not recall it, your Honor.

Q. Well, it is all the truth, isn't it?

A. You have it on the paper there.

Q. Well, I mean that is the truth, all those things that I said to you at that time?

A. Oh, that is true, yes.

Q. "That you have been married and divorced twice and have two children by one marriage; that after coming here with the Parkers in 1935 you were arrested and taken back to Ohio on a non-support charge and were sentenced to a term of one to three years and served one year? A. Sixteen months, your Honor."

A. Those questions, your Honor, were never propounded to me.

Q. They were not?

A. No, your honor.

Q. I never propounded those questions to you in open court?

A. Not that I recall.

Q. Well, we will have to have our court stenographer, Mr. Ford Wilber, here sworn and testified to that testimony you got out.

A. I really can't recall that.

Q. He took it?

A. Probably did.

Q. He is an officer of this Court the same as I am and he took this and he took the testimony of those four witnesses too; he has all that.

A. I was pretty sick, as I explained to you. Maybe I didn't hear it.

Q. You remember this question put to you here in open Court: "That you were here in 1932 and were convicted in this Court of breaking and entering and sentenced by this Court to Jackson? A. Yes, sir". You remember that?

A. I do not.

Q. Under the name of Patterson? You did go under the name of Patterson?

A. I did.

Q. "You further stated that after your release from prison in Ohio for non-support you returned to Kalamazoo and resumed your abode at the home of the Parkers? A Yes, sir." You remember that question and answer?

A. I don't.

Q. "That thereafter, if not before, you and Mrs. Parker became intimate? A Yes, sir." You remember that?

A. Your Honor, the Prosecutor, Mr. Paul Tedrow, asked me that question in the hospital, and I explained —

Q. (Interrupting) I say you remember that here in Court?

A. I do not, your Honor.

Q. Well, we will have to have the proof of all this. "You also stated that in 1934 you and Mrs. Parker made an agreement that if you and she ever got caught in your unlawful intimate relationship that you would die together? A. Yes, sir." You remember that?

A. No, sir.

Q. "You also stated that quite recently and about a week or so before this shooting you left the Parker home? A. Yes, sir."

A. I left the Parker home, but I don't remember the question.

Q. "Upon the insistence of Mrs. Parker? A. Yes, sir."

A. There was no insistence of Mrs. Parker.

Q. "That you secured a job at a filling station at Cox's Corners that was quite near Long Lake or the lake where you had been living? A. About three miles." Is that right?

A. I don't recall it.

Q. "You say the night before the shooting the Parkers came to a beer garden at Cox's Corners? A. Yes, sir." You remember that?

A. I do not.

Q. "And you had some beer with them? A. Yes, sir." This is all questions and answers?

A. That is true; I read them.

Q. Here in open court before you were sentenced; you remember that?

A. I remember being in the open court, your honor, being sentenced, I do, but the p pounded questions I cannot recall.

Q. "And that she asked you to come to her home the following morning? A. Yes, sir. Q. Presumably to go fishing? A. Yes, sir. Q. That you went to her home the following forenoon; her husband was absent, of course? Yes, sir." This is all the truth, isn't it? This is what happened, isn't it, just as you —

A. (Interrupting) Some of it happened and some of it didn't.

Q. Just as you told us here in court that morning of July 16?

A. I sure must have been out of my head when I was telling — answering those questions.

Q. "You told me that you took six bottles of beer with you? A. Yes, sir. I asked you that question. I said, you told me that you took six bottles of beer with you? A. Yes, sir." You remember telling me that?

A. I presume so.

Q. "And that she on your arrival asked her young daughter to go next door to Mrs. Pierce's. A. Yes, sir." You remember that?

A. No, your Honor, I don't.

Q. "And then she asked you to light a cigarette for her? A. Yes, sir. Q. And you did. A. Yes, sir." You remember all that?

A. I cannot recall any of it.

Q. "And you then said that she told you that her husband was talking about leaving her and getting a divorce? A. Yes, sir." You remember that? "And that she then asked you to keep your agreement with her that you and she should die together?" You remember her asking you to do that?

A. No, she never did ask me to do that, your Honor.

Q. "A. Yes, sir." You said so at that time, didn't you?

A. Life was awful sweet.

Q. "You say that she then produced this revolver? A. Yes, sir. Q. And that at her request you picked it up and shot her? A. Yes, sir." You remember saying all that. "Q. She was sitting in a chair? A. Yes, sir. Q. In the living room? A. The sun parlor." It was in the sun parlor?

A. We were sitting in the sun parlor.

Q. "The same chair near which the officers said the empty cartridge was found? A. Yes, sir." You remember that? "Q. Then you say you picked her up and put her on the bed. A. Yes, sir." Is that right?

A. I did lay her on the bed after she was hurt.

Q. "And that you then shot yourself? A. Yes, sir."

A. I never shot myself.

Q. You didn't.

A. I did not.

Q. "Did she say anything to you that morning about going fishing? A. She asked me if I wanted to go fishing. I told her it was pretty warn. She says, 'Then we won't go.'"

A. She asked me if I wanted to go fishing. I told her I did not.

Q. "You heard Mrs. Pierce testify that you asked her to telephone for a case of beer? A. I did. Q. Is that true. A. That is right."

A. I never asked Mrs. Pierce to telephone.

Q. You remember seeing her here in Court?

A. I do not.

Q. "Was that before or after you had the six bottles of beer you said you took? A. That was after." You remember telling us that?

A. I do not.

Q. "Anything more you want to say about it? A. That is all I have to say, your honor." You remember that? Then you remember the Court, speaking through me, proceeded to tell you that you had been arraigned and after an exhaustive interview with you, both in open court and at chambers, and the Court having proceeded with the examination of witnesses to determine the degree of the crime, after hearing the testimony of the witnesses Cobb, Pierce, Ketter and Charles Conner, and the testimony of yourself, unsworn, regarding the circumstances of the crime and it appearing from the testimony of such witnesses and the statement of respondent that the killing was deliberate and premeditated under the testimony of respondent himself, in pursuance of a suicide pact, and the Court finds and determines that respondent is guilty of murder in the first degree. You remember the Court was stating that you were guilty of murder in the first degree?

A. Yes, sir.

Q. You remember that all right?

A. I do.

Q. You remember then that the Court asked you — said to you: "You are convicted by your plea of guilty of murder by the determination of the Court of murder in the first degree; have you anything to say before

sentence? Respondent: No, sir." You remember that?

A. I do.

THE COURT: Well, now, Mr. Struble is here. I am going to ask you to just sit down in the chair a moment. We have to have Mr. Struble sworn.

(Charles W. Struble and Harry Ryskamp were here sworn as witnesses and testified).

Q. You remember Mr. Ryskamp being with you as a guard in the hospital?

A. Yes, I do.

Q. You remember the talk with him that he has just related?

A. I remember part of it, your Honor.

Q. All right; any questions you want to ask him?

A. None your Honor.

Q. Anything further that you know of, Quicksall?

A. That is all I know of right now, your Honor.

THE COURT: Mr. Barber?

MR. BARBER: Nothing further, your Honor.

THE COURT: Mr. Wilber, you have a record of the testimony?

MR. WILBER: (Court Reporter) I have.

THE COURT: The testimony was taken to determine the degree of murder as required by the statute. Have you any law you want to cite to the Court?

DEFENDANT: All the laws, your Honor, is cited in here.

THE COURT: It is all in your brief?

DEFENDANT: That is right.

THE COURT: The brief that you filed?

DEFENDANT: Yes, sir.

THE COURT: And you have nothing further that you want to call to the Court's attention?

DEFENDANT: That is all.

THE COURT: Can you say whether or not in your brief reference to the case that was recently decided by the Supreme Court that went up from Adrain, I think?

DEFENDANT: Your Honor, that citation is not in here.

THE COURT: Well, you are familiar with the case that I have in mind.

DEFENDANT: I am, yes, sir.

THE COURT: You have had it called to your attention?

DEFENDANT: I have.

THE COURT: The case in which a man was — pleaded guilty and sentenced the same day?

DEFENDANT: Yes, sir.

Q. What relatives did you want to get in touch with here that you claim you weren't permitted to?

A. I had a sister and sister-in-law down in Ohio.

Q. Here.

A. No, in Ohio, and I wanted to call them up. You see at that time, your Honor, I didn't have no money at all to hire counsel, and if I could have got in touch with them I know I could have got some.

THE COURT: Now, you have here a motion for leave to file a motion for a new trial, a motion for leave to file a motion for vacation of the — setting aside the sentence and plea of guilty and for a new trial:

DEFENDANT: That is true, your Honor.

THE COURT: Are you willing that the Court should consider both motions at this time, both the motion for leave to file and also the motion to vacate and set aside the judgment?

DEFENDANT: It would be agreeable to me, your Honor.

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THE COURT: Just the same as if you were entitled to file it?

DEFENDANT: That is right.

THE COURT: All right. Well, I will get at it. I can't decide it this moment. I will give it time and dispose of it. I would like to see the opinion of the Supreme Court in the Adrain case. It hasn't come through yet in the advance sheets and I would like to see it before I dispose of this, because as I view this, that is the only possible question that could be worthy of serious consideration in this case, would be that you pleaded guilty and were sentenced the same day. You were not denied the right of counsel; nothing in the history and the record in this case to show that you were denied an opportunity —

DEFENDANT: (Interrupting) Your Honor, I couldn't get in touch. I couldn't get out of bed and use a telephone. I asked to have somebody call, but — I don't know who gave the order, but the man that was on guard told me it was the Prosecutor and Sheriff.

THE COURT: How long had you been out of the hospital when you were brought into this Court?

DEFENDANT: I left the hospital on the 15th; the following day.

THE COURT: Well, is there anything further that you know of Mr. Barber?

MR. BARBER: No, sir.

THE COURT: All right. Well, then that concludes our hearing and he may be returned to Jackson and I will dispose of this within a few days and mail you a copy of the Court's opinion, whatever it is. All right.

TESTIMONY TAKEN AT THE TIME OF SENTENCE

STATE OF MICHIGAN
THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

THE PEOPLE OF THE STATE OF MICHIGAN,

vs.

CHARLES QUICKSALL,
Respondent.

(IN THE MATTER OF SENTENCE)

Before Hon. George V. Weimer, Circuit Judge, at Kalamazoo, Michigan, Friday A. D., July 16, 1937.

APPEARANCE:

Mr. Paul M. Tedrow, Prosecuting Attorney, for the People.

HORACE R. COBB, a witness, produced, sworn and examined on behalf of the People, testified as follows:

DIRECT EXAMINATION
By MR. TEDROW:

Q. Your name is Horace Cobb?

THE COURT: Just a minute. The record may show that this respondent has just offered to plead guilty and had pleaded guilty to a charge of murder; that

after a full statement by the respondent in response to numerous questions by the Court in open Court and after a private interview with respondent at chambers, in both of which he has freely and frankly discussed the details of this homicide as claimed by him, the Court being clearly satisfied that the plea of guilty is made freely, understandingly and voluntarily, an order has been entered accepting such plea of guilty. It now becomes necessary for the Court to proceed with the examination of witnesses, as required by the statute, to determine the degree of the crime and to render judgment accordingly. You may proceed.

Q. Your name is Horace Cobb?

A. Horace Cobb.

Q. You are a physician and surgeon?

A. In the State of Michigan, yes, sir.

Q. Duly licensed to practice your profession in the State of Michigan?

A. Yes, sir.

Q. You are also one of the county coroners?

A. I am.

Q. And on July 2nd last you had occasion to view the body of Grace Parker?

A. I did.

Q. And that occurred at Vicksburg, Michigan?

A. At Vicksburg in the hospital.

Q. And that is located in this County?

A. In Kalamazoo County.

Q. And later on you had occasion to perform an autopsy on Grace Parker?

A. I did.

Q. To determine the cause of death?

A. I did.

Q. Will you tell, Doctor, what you determined to be the cause of death?

A. The cause of death was due to a bullet wound that entered the chest through the fifth rib, mid clavicular line, passing through the tip of the heart, through the left lobe of the liver, downward, cutting off some of the larger vessels leading to the kidney on the left side, and stopped just below the skin between the tenth and eleventh rib, and there it was removed. The death was due to primarily to a bullet wound; contributary cause, hemorrhage from these vessels.

Q. The entrance of that bullet to the body was from the front, was it?

A. Yes.

Q. And the bullet was taken from what position?

A. From the back.

Q. And that bullet has been turned over to the Sheriff's Department?

A. Been turned over to Mr. Hammel.

MR. TEDROW: I think that is all, Doctor.

THE COURT: That is all.

JESSIE PIERCE, a witness, produced, sworn and examined on behalf of the People, testified as follows:

DIRECT EXAMINATION

By MR. TEDROW:

Q. Your name is Mrs. Jessie Pierce?

A. Yes, sir.

Q. And you live at Long Lake?

A. Yes, sir.

Q. In Pavilion Township?

A. Yes, I do.

Q. In Kalamazoo County?

A. Yes, sir.

Q. And your cottage or home is located next door to the Parker cottage?

A. Yes, it was.

Q. How far distant is your cottage from the Parker cottage?

A. Oh, I don't know as I can judge, not very far.

Q. Now, do you recall on July 2nd last that Mrs. Parker was at home?

A. Yes, she was.

Q. You had been acquainted with Mrs. Parker for some time?

A. She was my best friend.

Q. And you knew her husband?

A. Yes, sir, I did.

Q. His name was Joe Parker?

A. That is right.

Q. How long had you known them?

A. Well, we moved out there — it will be a year next month.

Q. Do you recall on the morning of July 2nd of seeing this respondent around the place?

A. Yes, I did.

Q. Do you know when he came there?

A. I am not positive, only what Mrs. Parker's daughter said she came over and said he was there. That was around between 9 and 9:30.

Q. Later on there was something called to your attention, was there not, about some trouble that had happened over at the Parker cottage?

A. Well, before that I had had breakfast with Mrs. Parker, that is, she had a couple cups of coffee and so did I, and she asked me to take her little daughter to my home because she wanted to have a showdown with

this party; then claimed that she was going to forbid him to come around there.

Q. By "this party" you mean whom?

A. Mr. Quicksall.

Q. You had known that Quicksall had been staying there yourself?

A. Yes, I knew that.

Q. Did you know that there was a period of time when he wasn't staying there?

A. I knew the Monday before that.

Q. The Monday before. This occurred on what day of the week?

A. On Friday, I believe.

Q. Before that he had ceased to stay there?

A. Yes, sir.

Q. You didn't actually see this respondent come to the place?

A. No, I didn't.

Q. What time did Mrs. Parker's daughter come to your place?

A. It must have been around 9:30.

Q. Then when was the first that you knew that there was some trouble over at the Parker cottage?

A. Well, the little daughter went home again, and she was playing solitare at the table.

Q. Who?

A. Mrs. Parker's daughter Alice, and she came over and she said that Charley wanted to see me, so I went over there, and he wanted to know if I would go to the neighbor's and call up and get a case of beer, and I said I wouldn't because we didn't believe in it and I wouldn't call.

Q. Who asked you to do that?

A. Mr. Quicksall.

Q. About what time was that?

A. Oh, I imagine that was — oh, later in the morning, about around 10:30 or 11.

Q. Where was Mrs. Parker at that time?

A. She was sitting in the chair. There was a studio couch and then a card table and then a chair.

Q. Did you have some talk with Mrs. Parker at that time in his presence, in Quicksall's presence?

A. Nothing only just general conversation. Everything was peaceful over there then.

Q. Who asked you to get a case of beer?

A. Mr. Quicksall.

Q. And what did Mrs. Parker say?

A. She said no.

Q. How long did you stay there at that time?

A. Oh, just a few minutes.

Q. Then where did you go?

A. Then the daughter and I took some cold meat and pickles and things over to my house and we were going to get the lunch.

Q. Was there a note left there at that time?

A. I didn't see any. Well, the daughter left a little note later — before that.

Q. Did you see that note written?

A. No, I didn't see it.

Q. Well, then, what next occurred?

A. Well, then, we fooled around the house, played the radio, and we started to get something to eat and get some sandwiches ready, and her daughter says she would go and get her mother to come over and have lunch with us.

Q. And the daughter did go over there?

A. She went over there.

Q. Then what occurred?

A. Well, the daughter came screaming out and told me that Charley had shot her mother.

Q. Came over to your place?

A. Yes, sir.

Q. What did you do then?

A. I started to rush out and I got as far as the steps when I hears a shot.

Q. You got as far as what steps?

A. Mrs. Parker's steps, just going to open the door.

Q. The back door?

A. Yes, sir.

Q. And you heard what?

A. I heard a shot.

Q. What did you do then?

A. I turned around and went to one of the neighbor's to call for help.

Q. What place did you go first?

A. Well, I went to Tassell's and they weren't home, and then I got mixed up in my houses, because I didn't know so very many there. I got to Mrs. Ketter's and then I found my right place, and I went over to Mrs. DeRight's.

Q. You were seeking Mrs. DeRight's place?

A. I was seeking a telephone along there, because I knew somebody had one.

Q. Mrs. DeRight had a telephone?

A. Yes, sir.

Q. Then what? Did you talk to Mrs. DeRight about calling the sheriff?

A. Yes. I was awful nervous and she calmed me down and told me she would do the calling, and she called for me.

Q. Then what did you do?

A. I went back to Mrs. Parkers.

Q. Who was there when you got in to the Parker cottage?

A. I can't remember everybody, but there was Mrs. Ketter, and I don't know who else. What is that name.

Q. There was someone else?

A. Yes, but I don't know who it was.

Q. Will you tell us when you went in there what you saw?

A. Well, Mrs. Parker was lying on her back on the bed and to one side was the revolver.

Q. Was that on the bed?

A. That was on the bed.

Q. What sort of a revolver was it?

A. Just a little small one that you could hold in the palm of your hand.

(Revolver marked Exhibit A).

Q. I show you People's Exhibit A; was it a revolver similar to that?

A. Similar to that.

Q. And that was lying where?

A. On the bed to the back of her, way out of her reach. It was way over.

Q. What was Mrs. Parker's condition at that time?

A. Well, she was sinking very fast. I had to talk to her quite a few times before I could get an answer out to her, and then I repeated two or three times and I asked her who shot her, and she said, "Charley did" and then I went out doors again looking for Mr. Parker, and he hadn't gotten home yet, and I went back in and I was in the dining room and she called me, and she said "Jessie, will you take care of my daughter Alice for me?" and I said I would.

Q. Was there anything said at that time by her about her going to die?

A. Yes, I tried to pull her to, you know; tried to have her use some will power. I didn't know she was quite

so bad, and she said "No, Jessie, I am going because it is all muddy water before my eyes".

Q. Did you observe any wounds about her body at that time — any blood?

A. In front — no blood, but there was just a burned place in the front of her dress, just a big hole.

Q. Did you see this respondent there?

A. I did.

Q. Where was he?

A. He was lying on the floor shot.

Q. Was he wounded?

A. Yes.

Q. Where?

A. Well, just about in here (indicating). His shirt was all burned. There was no blood there either.

Q. By "here," you mean where?

A. I can't tell just exactly.

THE COURT: Which side?

A. More to the center, I believe. I can't tell anything about a body like that. When he was lying down it looked as if it was just about like that (indicating).

Q. Right in the center?

A. Yes, sir.

Q. Over the stomach?

A. The stomach.

Q. And what was his condition?

A. He was moaning and groaning and after that he was quiet.

(Paper marked Exhibit B).

Q. I show you People's Exhibit B; is that a drawing of the Parker cottage — a map.

A. Yes.

Q. The bedroom show there?

A. Yes, right here (indicating).

Q. She was lying —

A. (Interrupting) She was lying right on the side of the bed, and the gun was back of her here (indicating).

Q. And the respondent was lying where?

A. On a rug — oh, I imagine not quite a foot from the bed, and their heads were facing the dining room and their feet were facing the window.

Q. Did you see any note around there, Mrs. Pierce?

A. No, I didn't.

Q. You didn't observe that?

A. No, I didn't.

MR. TEDROW: I think that is all, your Honor.

THE COURT: That is all.

CORA KETTER, a witness, produced, sworn and examined on behalf of the People, testified as follows:

DIRECT EXAMINATION

By MR. TEDROW:

Q. Your name is Mrs. Cora Ketter?

A. It is.

Q. You are the wife of Glenn Ketter?

A. Yes, sir.

Q. And you live at Long Lake?

A. Yes.

Q. You have lived there a good many years?

A. For approximately twelve years.

Q. On the morning of July 2nd last do you recall an occasion when Mrs. Pierce came to your house?

A. Yes.

Q. And told you that there was some trouble at the Parker cottage.

A. Yes.

Q. And wanted you to call the sheriff, did she?

A. Yes.

Q. And you left the place and where did you go?

A. Well, I started for Tassell's to use their phone, and she said "Would you go on over and I will go on over to DeRight's." She misinterpreted my meaning. I think she meant I was going to the cottage, so I went to the cottage.

Q. The Parker cottage was how far distant from your cottage?

A. Well, it is four cottages west.

Q. Did you go over to the Parker cottage?

A. Yes, sir.

Q. Were you the first one there?

A. I don't know.

Q. Did you go in the cottage?

A. I went in the cottage.

Q. Did you observe anyone in there beside Mrs. Parker and Quicksall.

A. No.

Q. Just tell us, Mrs. Ketter, when you went in the Parker cottage what you observed.

A. Well, Mrs. Parker was lying on the bed and Mr. Quicksall was lying on the floor.

Q. Beside the bed?

A. Yes.

Q. What was the condition of Mrs. Parker?

A. Well, she seemed to be very weak.

Q. Did you notice any injuries to her?

A. Yes, I noticed that — it looked like there was a shot right here (indicating).

Q. Just above — on the left side just above the belt?

A. Yes, sir.

Q. Did you notice any injuries about the respondent?

A. Well, yes, I noticed that it looked like a shot on his left side.

Q. Now, what occurred when you went in there? Anything said by Mrs. Parker or by Quicksall?

A. No. Mrs. Parker — Mrs. Pierce asked Mrs. Parker who shot her, and she said Charley.

Q. And then what else was said?

A. And then we tried to hold — tried to get her to hold herself, because we really didn't realize how bad she was, and she made the remark that she was going to die, and just a few minutes later she called out "Alice", and she asked Mrs. Pierce to take care of Alice.

Q. Alice was Mrs. Parker's daughter?

A. Yes, sir.

Q. Was there anything said by Mrs. Parker as to where this had occurred?

A. Yes, it seems like, if I remember right, she said she was sitting in the chair.

Q. In the chair, did she say what room?

A. No.

Q. She said she was sitting in the chair when this happened?

A. Yes, sir.

Q. Now, was Quicksall conscious at all while you were there?

A. No.

Q. He was unconscious?

A. Yes.

MR. TERDOW: I think that is all.

THE COURT: That is all.

CHARLES CONNER, a witness, produced, sworn and examined on behalf of the People, testified as follows:

DIRECT EXAMINATION

By MR. TEDROW:

Q. Your name is Charles Conner?

A. Yes.

Q. You are a deputy sheriff of Kalamazoo County?

A. I am.

Q. And you accompanied Mr. Buder when this call came in about the affray at the Parker cottage?

A. I did.

Q. The call came in about 11:30 A. M. on July 2nd, is that right?

A. We didn't go out in response to the call. Mr. Parker came to the office and said that he had a call.

Q. That is the husband?

A. Yes, sir.

Q. He came to the office?

A. Yes, sir.

Q. Who went out with you?

A. Joe Parker and the under sheriff, Buder.

Q. About what time did you get out there?

A. It was right close to noon.

Q. Will you tell us what you did when you got there? What occurred?

A. When we got out there we met Mrs. Pierce in the back yard, and Parker asked her if his wife was dead, or was she gone, I don't recall, and Mrs. Pierce said "yes," and Parker made a rush for the house, and Buder and I were pretty busy for two or three minutes keeping him from getting in, and finally we calmed him down and he went out in the garage, as I recall, with Mrs. Pierce.

Q. Just tell us what you did as you went in the place.

A. Buder and I went in the house.

Q. What did you observe in there?

A. We found Mrs. Parker lying on the bed, and immediately adjacent to the bed on the floor was Charles Quicksall. There was a bullet wound in the left chest near the center of Mrs. Grace Parker. There was also a bullet wound in the left chest of Charles Quicksall. Both of them were, I should say, unconscious at that time. Doctor Golding was there and handed me a gun wrapped in a handkerchief, saying that he had picked it off the bed.

Q. That is this People's Exhibit A?

A. That is right. At that time the ambulance was there from Vicksburg and I assisted in getting Mrs. Parker on the stretcher and out of the house, and then I went over to call for the police ambulance to come to get Quicksall.

Q. Now, you made a search around the premises, did you not?

A. Yes, we did.

Q. Did you find a note there?

A. Yes.

(Paper marked Exhibit C).

Q. I show you People's Exhibit C; where was that note found?

A. That was found on the dresser in the bedroom.

Q. How close to this respondent?

A. Well, it was just about room between the dresser and the bed. That was taken up, practically all of it, by the width of Quicksall's body, a distance of possibly 30 inches.

MR. TEDROW: We wish to offer this in evidence, your Honor.

THE COURT: Do you know anything about the handwriting?

MR. TEDROW: It is signed.

THE COURT: You may read it into the record.

MR. TEDROW (Reads): "July 2, 1937. I am dying, Grace and I together, because we cannot live apart. Charles Quicksall."

Q. Now, Mr. Conner, you looked around the place, did you not?

A. Yes, sir.

Q. Did you find some shells, empty shells?

A. Yes, I found two empty shells.

Q. Where did you find those shells?

A. One of the shells was in the sun parlor, we designated it, close by the chair, near the card table and davenport in the front room.

Q. Did you find other evidence around the chair as to whether or not the shot had occurred or the shooting of Mrs. Parker had occurred in that chair?

A. The seat of the chair was wet.

Q. Wet. Could you determine what it was?

A. It smelled like urine to me.

Q. How far distant from this chair was this empty shell?

A. A matter of about four feet.

Q. Did you find a live shell there in the living room?

A. Mr. Buder picked it up in my presence.

Q. Did you find another empty shell?

A. Yes, sir.

Q. Where did you find it?

A. Well, that was near a table in the dining room portion of the cottage.

Q. This is all one large room?

A. It was an "L" shaped room.

Q. Now, did these shells, em y shells and the live shell that you found, fit People Exhibit A?

A. Yes, there were the same make of shell.

THE COURT: This revolver?

MR. TEDROW: Yes. This revolver.

Q. Now, there has been a drawing, Mr. Conner, made People's Exhibit B. Does that depict an outline of the cottage and where these chairs and furniture were and where the beds were and where you found the shell?

A. Yes, approximately.

MR. TEDROW: I would like to offer in evidence this drawing, if your Honor please.

THE COURT: Received.

Q. Now, you accompanied this respondent down to the Bronson Hospital here in Kalamazoo?

A. No, I didn't.

Q. Did you have some talk with him about what had occurred?

A. Not until this morning.

Q. You overheard, did you not, his statement as made here in Court?

A. I did.

Q. Can you relate to us your memory of what occurred and what he stated to the Court?

THE COURT: I think we can cover that. The Court will cover that in the talk with the respondent to be made upon the record.

MR. TEDROW: I think that is all, your Honor, except the sheriff — there have been statements taken and the sheriff is out of the city, and he had a talk with this respondent, which carries out the same line as told to the court here.

THE COURT: You mean it is in harmony with what respondent said in Court here this morning?

MR. TEDROW: Yes.

THE COURT: It is merely surplus?
MR. TEDROW: Yes.
THE COURT: Any further testimony?
MR. TEDROW: That is all.

STATE OF MICHIGAN

In The

SUPREME COURT

APPEAL FROM THE 9TH JUDICIAL CIRCUIT
COURT OF KALAMAZOO, MICHIGAN

Honorable George V. Weimer, Circuit Judge

THE PEOPLE OF THE STATE
OF MICHIGAN,
Plaintiff,

vs.

CHARLES QUICKSALL
Defendant.

Calendar No. 43970

SUPPLEMENTAL RECORD ON APPEAL

CHARLES QUICKSALL, No. 40086,
Defendant and Appellant,
Acting In His Own Behalf.
4000 Cooper Street,
Jackson, Michigan.

EUGENE F. BLACK,
Attorney General of Michigan.

ROBERT BARBER,
Prosecuting Attorney for Kalamazoo County for the People.

REASONS AND GROUNDS FOR A SUPPLEMENT TO THE RECORD ON APPEAL

(Filed May 29, 1948)

STATE OF MICHIGAN
IN THE SUPREME COURT

APPEAL FROM THE CIRCUIT COURT OF KALAMAZOO

Honorable George V. Weimer, Circuit Judge

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff and Appellee,

vs.

CHARLES QUICKSALL
Defendant and Appellant.

Now comes Robert J. Barber, Prosecuting Attorney for Kalamazoo County, acting in behalf of the People of the State of Michigan, and says that the Record on Appeal is not complete and should be supplemented by the inclusion of matter contained in this Supplemental Record on Appeal

More specifically, this matter should be included in the Record on Appeal because of the following circumstances and reasons.

The proposed Record on Appeal was prepared by the Defendant, Charles Quicksall, and sent to the Circuit Court for Kalamazoo County for settlement and

certification. The Hon. George V. Weimer, Judge of the Ninth Judicial Circuit, refused to sign the certificate as prepared by the Defendant but did return to him a certificate as follows:

> "I, George V. Weimer, Judge of the 9th Judicial Circuit, hereby certify that the foregoing settled case constitutes all the proceedings had in said cause and the whole of the same *except a transcript of testimony mentioned in my order denying leave to appeal* and that after due notice I have settled, signed and certified the same on the 6th day of February A. D. 1948, after due notice to all parties concerned." (Italics supplied).

This certificate was accompanied by a letter which was written by the Hon. George V. Weimer, Circuit Judge, addressed to Defendant, Charles Quicksall, and also dated February 6, 1948. This letter is printed in the Record on Appeal, page 42, and is as follows:

> "GEORGE V. WEIMER
> Circuit Judge
> Kalamazoo, Michigan
>
> February 6, 1948.
>
> Charles Quicksall, No. 40,086,
> 4000 Cooper St.,
> Jackson, Michigan.
>
> Dear Sir:
>
> In reply to your letter received today I have signed the certificate attached to your proposed record on appeal, but have noted therein an exception that the record does not contain a transcript

of the testimony taken before your plea of guilty was accepted.

You have a transcript of my memorandum filed when your motion for leave to appeal was denied, and *in that memorandum I made it very clear that a transcript of your testimony* and that of the four witnesses *should be included in the record upon appeal.* You have not done that.

The Supreme Court is entitled to an entire record, and *before you have it printed you should obtain a transcript of all the testimony and include it in the record.*

Yours truly,

GEO. V. WEIMER."

(Italics supplied).

In his letter, Judge Weimer refers to his memorandum recorded at the time of his denying Defendant's motion for leave to appeal. This memorandum was dictated into the record as an opinion sustaining the denial of the motion and in this memorandum (printed on page 28, et seq., of the record on Appeal), at page 31 the Court stated:

> "A record was made by Mr. Ford R. Wilber, the Court Stenographer of all of the questions by the Court and Defendant's answers thereto and a transcript thereof is on file and at this point should be inserted in and considered a part of these findings."

Therefore, we see that on May 13, 1947, upon denying a motion for leave to appeal, the Trial Court directed that this transcript of testimony therein mentioned

be included in the Record and that on February 6, 1948, upon certifying the Record, the Hon. Trial Judge noted the omission of this testimony and certified the record only with the express exception of this particular testimony. The Certificate was accompanied by a letter of the same date which very clearly stated that the record should not be printed until a transcript of all testimony was obtained and included. In spite of these repeated reminders and requests to include this transcript of testimony, the Appellant had the Record on Appeal printed without said transcript of testimony.

Because the Record was not completed as requested by the Trial Judge, and because the omitted testimony bears very heavily upon the questions submitted by the Defendant, and the charge of Defendant that he was not afforded procedural due process, it is respectfully submitted that the Record on Appeal be supplemented by the matter included in this Supplemental Record on Appeal.

Signed Robert J. Barber,
Prosecuting Attorney for Kalamazoo County, Michigan.

Dated....., 1948.

IN THE MATTER OF SENTENCE

STATE OF MICHIGAN
THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

PEOPLE OF THE STATE OF MICHIGAN,

vs.

CHARLES QUICKSALL
Respondent.

Before HON. GEORGE V. WEIMER, Circuit Judge, at Kalamazoo, Michigan, Friday A.M., July 16, 1937.

THE COURT: The record may show that this respondent has just offered to plead guilty and has pleaded guilty to a charge of murder; that after a full statement by the respondent in response to numerous questions by the Court in open Court and after a private interview with respondent at chambers, in both of which he has freely and frankly discussed the details of this homicide as claimed by him, the Court being clearly satisfied that the plea of guilty is made freely, understandingly and voluntarily, an order has been entered accepting such plea of guilty. It now becomes necessary for the Court to proceed with the examination of witnesses, as required by the statute, to determine the degree of the crime and to render judgment accordingly. You may proceed.

(The testimony of the following witnesses was taken in open Court: Horace R. Cobb, Jessie Pierce, Cora Ketter, and Charles Conner).

THE COURT: All right, Quicksall, you may stand up here.

STATEMENT OF RESPONDENT

QUESTIONS

By THE COURT:

Q. You have just heard the testimony of the four witnesses, Doctor Cobb, Mrs. Jessie Pierce, Mrs. Cora Ketter, and Deputy Charles Conner?

A. Yes, sir.

Q. Have you any comment to make upon any of that testimony?

A. No.

Q. When you were arraigned this morning and pleaded guilty and your plea was accepted, in the talk that was had between the Court and you here in open Court, and in the talk that I had with you privately in chambers, it is my recollection that you said in substance the following, and I am going to repeat what I recall you said to me: That you were born in Mansfield, Ohio, in 1893; left school in the eighth grade at the age of sixteen; that you have been a laborer and a cook most of your adult life; that you lived in the home of Mr. and Mrs. Parker in Toledo before coming to Kalamazoo; that they moved to Kalamazoo in 1935, and that you came here with them; is that right?

A. Yes, sir.

Q. That you have been married and divorced twice

and have two children by one marriage; that after coming here with the Parkers in 1935 you were arrested and taken back to Ohio on a non-support charge and were sentenced to a term of one to three years and served one year?

A. Sixteen months, your honor.

Q. That you were here in 1932 and were convicted in this Court of breaking and entering and sentenced by this Court to Jackson?

A. Yes, sir.

MR. TEDROW (Prosecuting Attorney): That was under the name of Patterson.

A. My mother was married twice and I went by that name.

Q. That was by the name of Patterson?

A. Yes, sir.

Q. You further stated that after your release from prison in Ohio for non-support you returned to Kalamazoo and resumed your abode at the home of the Parkers?

A. Yes, sir.

Q. That you returned here about April of this year?

A. Yes, sir.

Q. That thereafter, if not before, you and Mrs. Parker became intimate?

A. Yes, sir.

Q. Probably before, wasn't it?

A. Yes, sir.

Q. You also stated that in 1934 you and Mrs. Parker made an agreement that if you and she ever got caught in your unlawful intimate relationship that you would die together?

A. Yes, sir.

Q. You also stated that quite recently and about a week or so before this shooting you left the Parker home?

A. Yes, sir.

Q. Upon the insistence of Mr. Parker?

A. Yes, sir.

Q. And that you secured a job at a filling station at Cox's Corners that was quite near Long Lake or the lake where you had been living?

A. About three miles.

Q. You say the night before the shooting the Parkers came to a beer garden at Cox's Corners?

A. Yes, sir.

Q. And you had some beer with them?

A. Yes, sir.

Q. And that she asked you to come to her home the following morning?

A. Yes, sir.

Q. Presumably to go fishing?

A. Yes, sir.

Q. That you went to her home the following forenoon; her husband was absent, of course?

A. Yes, sir.

Q. You told me that you took six bottles of beer with you?

A. Yes, sir.

Q. And that she on your arrival asked her young daughter to go next door to Mrs. Pierce's?

A. Yes, sir.

Q. And you and Mrs. Parker drank the six bottles of beer?

A. Yes, sir.

Q. And then she asked you to light a cigarette for her?

A. Yes, sir.

Q. And you did?

A. Yes, sir.

Q. And you then said that she told you that her husband was talking about leaving her and getting a divorce?

A. Yes, sir.

Q. And that she then asked you to keep your agreement with her that you and she should die together?

A. Yes, sir.

Q. You say that she then produced this revolver?

A. Yes, sir.

Q. And that at her request you picked it up and shot her?

A. Yes, sir.

Q. As she was sitting in a chair?

A. Yes, sir.

Q. In the living room?

A. The sun parlor.

Q. The same chair near which the officers said the empty cartridge was found?

A. Yes, sir.

Q. Then you say you picked her up and put her on the bed?

A. Yes, sir.

Q. And that you then shot yourself?

A. Yes, sir.

Q. Did she say anything to you that morning about going fishing?

A. She asked me if I wanted to go fishing. I told her it was pretty warm. She says "Then we won't go."

Q. You heard Mrs. Pierce testify that you asked her to telephone for a case of beer?

A. I did.

Q. Is that true?

A. That is right.

Q. Was that before or after you had had the six bottles of beer you say you took?

A. That was after.

Q. Anything more you want to say about it?

A. That is all I have to say, your honor.

* * *

THE COURT: In this case, the respondent having been arraigned on the information charging him with murder, and having pleaded guilty thereto and said plea of guilty having been accepted by the Court, after an exhausive interview with the respondent both in open Court and at chambers, and the Court having proceeded with an examination of witnesses to determine the degree of the crime, after hearing the testimony of the witnesses Horace Cobb, Jessie Pierce, Cora Ketter and Charles Conner, and the testimony of the respondent, himself, unsworn, regarding the circumstances of this crime, and it appearing from the testimony of such witnesses and from the statement of the respondent that the killing was deliberate and premeditated, and under the testimony of the respondent himself that it was in pursuance of a suicide pact, so-called, the Court finds and determines that respondent is guilty of murder in the first degree, and it is, therefore, ordered and adjudged that respondent be and he is guilty of murder in the first degree.

You are convicted by your plea of guilty of murder and by the determination of the Court of murder in the first degree; have you anything to say before sentence?

RESPONDENT: No, sir.

THE COURT: The sentence of the Court is that you, Charles Quicksall, shall be committed to the State

Prison of Southern Michigan at Jackson and there confined in solitary confinement at hard labor for and during the period of your natural life.

CERTIFICATE OF THE COURT STENOGRAPHER

STATE OF MICHIGAN
IN THE SUPREME COURT
APPEAL FROM THE 9TH JUDICIAL CIRCUIT COURT FOR THE CITY OF KALAMAZOO, MICHIGAN

Honorable George V. Weimer, Circuit Judge

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

vs. Calendar No.....

CHARLES QUICKSALL
Defendant and Appellant.

I, Ford R. Wilber, Court Stenographer of the 9th Judicial Circuit Court, hereby certify that the foregoing transcript of testimony is a true, correct, and exact copy of the transcript as written by me from my notes and filed with the Clerk of the Circuit Court.

Ford R. Wilber,
Court Stenographer.

CERTIFICATE OF THE COURT

STATE OF MICHIGAN
IN THE SUPREME COURT

APPEAL FROM THE 9TH JUDICIAL CIRCUIT COURT FOR THE CITY OF KALAMAZOO, MICHIGAN

Honorable George V. Weimer, Circuit Judge

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,
vs.
CHARLES QUICKSALL,
Defendant and Appellant.

Calendar No.....

I, George V. Weimer, Judge of the 9th Judicial Circuit Court, hereby certify that the foregoing transcript of testimony constitutes all that portion of the record in the above entitled cause which is not included in the Record on Appeal, and that I have signed this certificate this 28th day of May 1948.

George V. Weimer,
Circuit Judge.

[fol. 95] IN SUPREME COURT OF MICHIGAN

THE PEOPLE OF THE STATE OF MICHIGAN, Plaintiff and Appellee

v.

CHARLES QUICKSALL, Defendant and Appellant.

Before the Entire Bench

OPINION—Filed October 4, 1948

NORTH, J.

On the 2nd day of July, 1937, Charles Quicksall, defendant herein, shot and killed Mrs. Grace Parker. He was arrested on the same day, and owing to a self-inflicted wound, he was taken to a hospital where he was kept under guard. The death of Mrs. Parker was evidently the culmination of a suicide pact entered into by defendant and the deceased in which it was agreed that in event of detection of their unduly intimate relations they "would die together." On July 15, 1937, defendant having recovered, was arraigned on a complaint and warrant charging him with murder. He waived examination and was held for trial in the circuit court. On the following day an information charging defendant with murder was filed, he was arraigned, and pleaded guilty. Thereupon the circuit judge painstakingly and in much detail investigated the attendant circumstances, both by interviewing defendant privately [fol. 96] in the judge's chambers and by examination of defendant in open court, where a record of the proceedings was made. At the same time four witnesses, who had knowledge of facts revelant to the offense charged, were examined in open court in defendant's presence. Thereupon defendant's plea of guilty was accepted and determination made by the court that the offense committed by defendant was murder in the first degree, and a sentence of life imprisonment was imposed.

Approximately 10 years later (April 18, 1947) defendant filed a motion for leave to file a delayed motion to vacate the sentence and set aside his plea and for a new trial. This motion was opposed by the prosecuting attorney. A hearing was had at which defendant was personally present. His application and the showing in support thereof

were carefully considered, he was examined, not under oath, in court. Witnesses were examined as to matters upon which defendant relied and the trial court again with extreme patience and care investigated and considered defendant's claims, and after due consideration defendant's motion was denied. At the above hearing defendant was asked if he desired counsel should be provided for him, but he declined to have counsel, saying "I figure that I would be just as well qualified to present it myself." Leave having been granted, defendant has appealed.

At the outset defendant complains of an alleged irregularity in his arraignment, in that he now says the prosecuting attorney waived the examination for defendant. The record shows that the complaint was read to defendant; [fol. 97] that his rights were "explained to him" by the magistrate and that defendant "expressly waived examination." However, if, as we hereinafter hold, defendant's plea of guilty was voluntarily and knowingly entered, any irregularity incident to his arraignment before the examining magistrate was waived, and therefore need not be given further consideration. People v. Tate, 315 Mich. 76.

Next, defendant asserts that the information filed against him was fatally defective in that it did not specify in what manner or with what instrument the alleged crime was committed. Under Michigan law there is no merit to this contention. The information complies with the statutory requirements of this state, which are:

> "In any indictments for murder and manslaughter it shall not be necessary to set forth the manner in which nor the means by which the death of the deceased was caused; but it shall be sufficient in any indictment for murder to charge that the defendant did murder the deceased * * *." 3 Comp. Laws 1929, § 17, 285; Stat. Ann. § 28.1011. See also People v. Bemis, 51 Mich. 422; People v. Roberts, 211 Mich. 187.

Defendant's next contention, as set forth in his brief as follows:

> "Defendant contends he was denied the right to the assistance of Counsel. And his plea was entered because of misunderstanding, through the effect of fear and of misrepresentation."

As to the first of the above contentions, the record discloses its inaccuracy. The record refutes defendant's claim that "he was denied the right to the assistance of counsel." While it is true defendant at the 1937 hearing in court was [fol. 98] not represented by counsel, there is no showing that he at any time intimated to the court a desire for counsel. We shall note some of the facts which in the instant case present a materially different factual background from that found in numerous cases upon which defendant seeks to rely in asserting reversable error because at the time of his conviction he did not have counsel. At the time defendant was before the court charged with this murder, he by no means was a man lacking in ordinary intelligence, he was not youthful, neither was he one who was inexperienced in court proceedings. Instead, at the time he pleaded guilty he was 44 years of age. The record made at that time and particularly his attitude and conduct in court in this later hearing disclosed that he was a man of fairly keen intellect and not one who by reason of youth or adverse circumstances should have his rights carefully protected by the appointment of counsel, which, as above noted, was not requested. He had been twice married and twice divorced. In addition to the above court experience he had been twice convicted of a felony and served penitentiary terms—16 months in Ohio and a latter term in Michigan for breaking and entering. At the present hearing defendant at no time asserted that when he pleaded guilty he was not aware of his right to be represented by counsel, and, if circumstances justified, appointment of such counsel for him by the court. In view of defendant's intelligence, his age, and his earlier experiences in court, there would seem to be no room for doubting that defendant at the time he pleaded guilty knew of his right to counsel if requested. Even at the hearing of the present matter he made no such [fol. 99] request, but instead he chose to proceed without the appointment of counsel. Under the circumstances disclosed the rights of defendant were not infringed by reason of counsel not having been appointed for him at the time he pleaded guilty.

Careful consideration was given by the trial court and has also been given by this court to defendant's contention that he entered a plea of guilty "because of misunderstanding, through the effect of fear and of misrepresentation." The

conclusion is quite irresistible that defendant did not plead guilty through a misunderstanding as to his being then charged with *murder*, which is the claim he now makes. Among other things disclosed by the record is the following. Before his arraignment and while he was at the hospital defendant said to an attendant: "* * * it will mean life for me anyway." On defendant's arraignment before the magistrate there was read to him a complaint which in plain words charged that he "feloniously, wilfully and of his malice aforethought, did kill and *murder* one Grace Parker." The information read to him at the time he pleaded guilty recited substantially the same words. When questioning defendant, not under oath, in the present matter the circuit judge asked defendant the following:

> "Q. You remember then that the Court asked you—said to you (at the time defendant pleaded guilty): 'You are convicted by your plea of guilty of *murder* by the determination of the Court of *murder in the first degree;* have you anything to say before sentence? Respondent: No, sir.' You remember that?
>
> "A. I do."

[fol. 100] So far as disclosed, defendant has never denied and does not now deny that he shot and killed Mrs. Grace Parker. Under this record it would be an insult to one's intelligence to sustain defendant's claim that he did not understand he was charged with murder.

Insofar as defendant now claims he pleaded guilty "through the effect of fear and of misrepresentation", the alleged pertinent facts are as follows. Defendant, after all these years, now asserts that while he was in the hospital either the prosecuting attorney or the sheriff, or both, stated to defendant that if he would plead guilty he would be given a sentence of not more than two to 15 years, supposedly for the offense of manslaughter. He also claims that he was lead to believe by his custodians that they were protecting him from harm in that the husband of the murdered woman was threatening to throw acid in his face, and further that when he was confined to the hospital bed his request that someone make a long distance telephone call to his relatives in Ohio requesting that they aid defendant in procuring counsel, was not granted. It is worthy of note that notwithstanding at the time he entered a plea of guilty

defendant had ample opportunity, both in open court and in private consultation with the circuit judge, to advise the circuit judge of any or all of the above circumstances, defendant does not now assert that he made any claim of that character before the circuit judge. Of course, at that time the prosecuting attorney was present, and the sheriff in all probability was available. But now after all these years of delay and defendant for the first time is making [fol. 101] these claims, it is disclosed by the record that the prosecuting attorney because of a stroke of paralysis is bedridden, is entirely incapacitated, and in consequence is unable to testify. At the hearing of the present matter and in defendant's presence the sheriff, who had custody of defendant after his arrest and until his plea of guilty was entered, testified and definitely denied defendant's claim that while he was in custody the sheriff or anyone in the sheriff's presence denied defendant the right to get in touch with friends or relatives incident to procuring a lawyer or to use the telephone for that purpose. The sheriff also testified that defendant was not denied the right to consult with a lawyer, and also testified that in talking to the sheriff or the prosecutor the defendant had not denied his guilt of the crime charged. Further, so far as the sheriff could recall, the defendant did not at any time ask the sheriff to get a lawyer or to get in touch with a lawyer for defendant; and the sheriff definitely denied that either he or the prosecuting attorney, so far as the sheriff was aware, had told defendant he could not have the assistance of counsel or visitors until he had been in court; and that the sheriff did not advise defendant that he had better plead guilty to manslaughter, and the sheriff never had any knowledge of the prosecutor saying to defendant if he would so plead the prosecutor would see that defendant would receive a sentence of from two to 15 years. The circuit judge who heard this motion, being the same judge who accepted defendant's plea of guilty, evidently gave no credence to defendant's assertions in the respect under consideration, nor do we. In any event since [fol. 102] defendant did not at the time report these matters to the trial judge he should not be heard at this late date to assert them to the same judge in the hope of invalidating the sentence imposed.

The remaining portion of defendant's brief is devoted

to his claim that: "Appellant (was) denied his constitutional rights to the equal protection of laws * * * which is guaranteed by both the State (Constitution, art. 2, §19) and Federal Constitutions, through the fifth, sixth and fourteenth amendment- * * *." In determining whether one convicted of crime has been denied his constitutional rights in the manner above indicated, it is necessary in each instance to give careful consideration to the factual background of the particular case. See Wade v. Mayo, — U. S. —, (decided June 14, 1948) wherein relative to an alleged violation of one's constitutional rights, it is said:

> "There are some individuals who, by reason of age, ignorance or mental capacity, are incapable of representing themselves adequately in a prosecution of a relatively simple nature. This incapacity is purely personal and can be determined only by an examination and observation of the individual."

And in Betts v. Brady, 316 U. S. 455, 473, in the prevailing opinion it is said:

> "As we have said, the Fourteenth Amendment prohibits the conviction and incarceration of one whose trial is offensive to the common and fundamental ideas of fairness and right, and while want of counsel in a particular case may result in a conviction lacking such fundamental fairness, we cannot say that the Amendment embodies an inexorable command that no trial for any offense, or in any court, can be fairly conducted and justice accorded a defendant who is not represented by counsel. The judgment is affirmed."

[fol. 103] We have already outlined quite in detail the factual background of the instant case; and under the circumstances disclosed by this record we are convinced that defendant was not deprived of any of his constitutional rights. We have given careful consideration to the numerous cases cited by defendant in support of his contention; but, without herein reviewing them in detail, we deem it sufficient to note as to each of such cases that we find them clearly distinguishable from the instant case on the basis of the factual background. For example, defendant cited DeMeerleer v. Michigan, 329 U. S. 663. The defendant in that case was an inexperienced youth of the age of only 17

years, who was arrested, convicted by a plea of guilty of murder in the first degree after he had sought to plead guilty to murder in the second degree, and was sentenced, all on the same day.

Another case cited and relied upon by defendant is Powell v. Alabama, 287 U. S. 45; 77 L. Ed. 158, but there again the factual situation in consequence of which it was held that there had been an invasion of defendant's constitutional rights are not at all comparable to the background of the instant case. In the Powell case, where it was held the defendants had not been given a fair trial, on page 57 of its opinion, the court said:

> "The defendants, young, ignorant, illiterate, surrounded by hostile sentiment, haled back and forth under guard of soldiers, charged with an atrocious crime regarded with especial horror in the community where they were to be tried, were thus put in peril of their lives within a few moments after counsel for the first time charged with any degree of responsibility began to represent them."

[fol. 104] Our conclusion is that the instant case is in the field of law and governed by our decisions in such cases as People v. Fries, 294 Mich. 382, and in re Elliott, 315 Mich. 662.

In the Fries case a headnote reads:

> "Acceptance of plea of guilty and passing sentence for carrying concealed weapons without a license without having appointed counsel for defendant *held*, not error under record showing that he had waived examination before the magistrate, voluntarily pleaded guilty, did not indicate a desire to have counsel, and no unusual circumstances disclosed duty of court to appoint counsel."

In the Elliott case, in which the United State Supreme Court denied certiorari, the gist of the decision is indicated by the following headnote:

> "Release of prisoner on writ of habeas corpus for which petition was filed more than 15 years after he had pleaded guilty *held*, not justified because of alleged denial of right to be represented by counsel, under

record showing that petitioner had been duly arraigned in circuit court on charge of robbery armed, made no request for counsel, entered a voluntary plea of guilty which was freely and understandingly made, that sentence was later imposed, and that petitioner did not at any time make any request to be allowed counsel or to change his plea."

After a careful consideration of the various contentions made by defendant, we are brought to the conclusion that there is no merit to his motion for leave to make a delayed motion for a new trial. The holding of the circuit court to that effect is affirmed.

Signed: Walter H. North, Emerson R. Boyles, George E. Bushnell, Edward M. Sharpe, Neil E. Reid, John R. Dethmers, Leland W. Carr, Henry M. Butzel.

[File endorsement omitted.]

[fol. 105] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1948

No. 202, Misc.

ORDER DENYING PETITION FOR APPEAL, GRANTING CERTIORARI AND TRANSFERRING CASE TO APPELLATE DOCKET —February 28, 1949

On consideration of the petition for allowance of an appeal in this case, it is ordered by this Court that the said petition for appeal be, and it is hereby denied.

Treating the appeal papers herein from the Supreme Court of the State of Michigan as an application for a writ of certiorari, certiorari is granted and the case is ordered transferred to the appellate docket as No. 609.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 33

CHARLES QUICKSALL,

Petitioner,

vs.

PEOPLE OF THE STATE OF MICHIGAN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

MOTION FOR LEAVE TO FILE SUPPLEMENT TO RECORD

EDMUND E. SHEPHERD,
Solicitor General of the State of Michigan,
Counsel for Respondent.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 33

CHARLES QUICKSALL,

Petitioner,

vs.

PEOPLE OF THE STATE OF MICHIGAN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

MOTION FOR LEAVE TO FILE COPY OF CERTIFIED SUPPLEMENT TO RECORD

The respondent, by Edmund E. Shepherd, Solicitor General of the State of Michigan, respectfully moves the Court to grant permission to file as part of the record of this cause in the court below, the attached certified copy of a transcript of the testimony of two witnesses, viz., one Charles W. Struble and one Harry Ryscamp, sheriff and deputy-sheriff, respectively, of the county of Kalamazoo, Michigan, taken on the 9th day of May, 1947 before the circuit judge

upon hearing of the petitioner's motion for leave to file a delayed motion for new trial, and for the following reasons:

1. The transcript aforesaid, as appears from the certificate of the clerk of the Supreme Court of the State of Michigan, constitutes a supplement to the record of said court in this cause and was duly submitted to and considered by the court in rendering its decision and judgment herein.

2. A true copy of such transcript is set forth in the "Response on behalf of the People of the State of Michigan" filed with the Clerk of this Court prior to the granting of a writ of certiorari.

3. It clearly appears from such transcript and from the printed record, page 61, as well as from the "memorandum" of the circuit judge (R. p. 32), that the testimony of such witnesses was taken in open court during the hearing of petitioner's motion for leave to file a delayed motion for new trial.

4. Such transcript was omitted from the printed record through inadvertence.

5. The testimony aforesaid is essential to a fair consideration of the questions presented to this Court for decision.

Respectfully submitted,

EDMUND E. SHEPHERD,
Solicitor General of the State of Michigan,
Counsel for Respondent.

STATE OF MICHIGAN, THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

THE PEOPLE OF THE STATE OF MICHIGAN,

vs.

CHARLES QUICKSALL,

Defendant

SUPPLEMENTAL RECORD

Testimony of Charles W. Struble and Harry Ryskamp

Before Hon. George V. Weimer, Circuit Judge, at Kalamazoo, Michigan, Friday A. M., May 9, 1947

Appearances:

Mr. Robert J. Barber, Prosecuting Attorney, for the People.

Charles Quicksall, in pro per.

The Court: Well, now, Mr. Struble is here. I am going to ask you to just sit down in the chair a moment. We have to have Mr. Struble sworn.

CHARLES W. STRUBLE, a witness, produced, sworn and examined on behalf of the People, testified as follows:

Direct examination.

Questions by the Court:

Q. Mr. Struble, you were sheriff of this county for several years including 1937?

A. Yes sir.

Q. You remember Quicksall, the Defendant?

A. Yes sir.

Q. You remember talking with him before he pleaded guilty?

A. I do.

Q. Did you at any time or did Mr. Tedrow in your presence at any time deny Quicksall the right to get in touch with his friends and neighbors or relatives or to get a lawyer?

A. No sir.

Q. He has made an affidavit in which he states you denied him the right to the use of a telephone so that he could get in touch with somebody?

A. No sir.

Q. He states that he was denied the right to consult with his lawyer, his family or friends and relatives. You remember about that?

A. That isn't true.

Q. He states that in talking with you and Mr. Tedrow, the Prosecuting Attorney, that he definitely denied or stated that he was not guilty of the crime charged against him. Did he ever say that to you?

A. No sir.

Q. So far as you can recall, did he ever at any time ask of you to get a lawyer or to get in touch with a lawyer?

A. No.

Q. He says in his affidavit that he was refused the right to get a lawyer or to have the assistance of counsel; that he was advised by the sheriff and Prosecuting Attorney that he could not have the assistance of counsel, nor could he have any visits until he had been in Court.

A. No sir.

Q. Any truth in all that?

A. No truth.

Q. He says in his affidavit that he was advised by the Sheriff and Prosecuting Attorney that he better plead guilty to the charge of manslaughter, and that he, the Prosecuting Attorney, would see that he automatically would receive a sentence of two to fifteen years. Did you ever hear of anything like that?

A. I never did.

Q. Mr. Tedrow, the then Prosecuting Attorney, is now desperately stricken with paralysis?

A. He is.

Q. You know that?

A. I saw him day before yesterday.

Q. Unable to talk?

A. Yes sir.

Q. Bedridden?

A. Yes sir.

Q. He says under oath that he was not informed by the Sheriff or Prosecuting Attorney that if he entered a plea of guilty he would be sentenced to life imprisonment. Of course you didn't know what he would be sentenced?

A. I didn't know.

The Court: Well, now, I am sorry, but I have got to have a recess for about thirty minutes. Anything more to show by Mr. Struble that you want to show? You want to ask him any questions, Quicksall?

Mr. Quicksall: I would, your honor.

(Court here took a recess.)

The Court: Anything further from Mr. Struble?

Mr. Barber: I think we should put him back on the stand and give the Petitioner a right to ask him any questions that he wishes to.

The Court: That is right.

Mr. Quicksall: I just have two questions I want to ask the witness, your honor.

Cross-examination.

By Mr. Quicksall:

Q. Mr. Struble, when I was in the hospital you recall the story of the acid—coming up there and throwing acid in my face?

A. Such a report, yes.

Q. And you recall the Prosecutor, Mr. Paul Tedrow, when he promised me that if I would plead guilty that I would get two to fifteen years?

A. No.

Q. For manslaughter?
A. No.

Mr. Quicksall: That is all, your honor.

The Court: There isn't any question that Mr. Tedrow is unavailable as a witness. We all know that he is desperately stricken with a paralytic stroke; that he is bedridden and unable to talk; that he can't be produced. Is there anything further that you want, Quicksall?

Mr. Quicksall: That is all, your honor.

The Court: Mr. Ryskamp.

HARRY RYSKAMP, a witness, produced, sworn and examined on behalf of the People, testified as follows:

Direct examination.

Questions by the Court:

Q. You are a deputy sheriff?
A. I am.
Q. And Court Officer?
A. Yes sir.
Q. Do you remember the Quicksall case?
A. I do.
Q. You were on duty part of the time at the hospital?
A. As a guard, yes sir.
Q. Here is a report that appears to be signed by you. Did you sign it?
A. I did. I also typed it.
Q. You typed it?
A. Yes sir.
Q. At the time?
A. From notes.
Q. At the time when it was fresh?
A. That is right.
Q. July 2nd?
A. July 3rd, the morning of July 3rd.
Q. You will read it into the record.
A. "Subject: Case of Charles Quicksall, dated July 3, 1937, by Ryskamp. I was unable to get much information

from prisoner until about 5 A. M. He then apparently felt better after his night's rest and seemed willing to talk as follows: 'How long will I have to lay here? I wish to Christ it had taken effect on me like it did on her. If I get over this it will mean life for me anyway.' When I asked him what brought it all on, his reply was: 'I don't know. We were just sitting there drinking beer.' And then I asked him if it was agreed on that they die together. His answer was 'yes. What time did she die?' He then had a bad coughing spell, so I stopped questioning him," and my signature at the bottom.

The Court: All right. Any questions?

Mr. Quicksall: None, your honor.

I, Ford R. Wilber, Official Stenographer of the Ninth Judicial Circuit, do hereby certify that the above and foregoing is a true and correct transcript of my stenographic notes of the testimony of Charles W. Struble and Harry Ryskamp, taken upon said hearing on May 9, 1947, and of the whole thereof.

(Sgd.) FORD R. WILBER,
Official Stenographer,
Ninth Judicial Circuit.

IN THE SUPREME COURT OF THE STATE OF MICHIGAN

No. 43970

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

vs.

CHARLES QUICKSALL,
Defendant

IN THE SUPREME COURT, SS:

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of a transcript of the testimony of one Charles W. Struble and one Harry Ryskamp, taken before Honorable George V. Weimer, Circuit Judge, at Kalamazoo, Michigan, Friday A. M., May 9, 1947, upon the hearing of defendant's motion for leave to file a delayed motion for new trial. I further certify that said transcript was filed in the office of the clerk of the Supreme Court of the State of Michigan as a supplemental record on the 17th day of September, 1948, that it constitutes a part of the record in this cause and that it was duly submitted to and considered by the Supreme Court of the State of Michigan prior to its decision; that I have compared the same with the original, and that it is a true transcript therefrom and of the whole thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court at the City of Lansing, this twenty-eighth day of December, in the year of our Lord, one thousand nine hundred and forty-nine.

JAY MERTZ,
Clerk of the Supreme Court of Michigan.

[SEAL.]

FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 33

CHARLES QUICKSALL,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF FOR THE PETITIONER

ISADORE LEVIN,
Counsel for Petitioner.

WALTER E. OEHLER,
Of Counsel.

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BRIEF FOR THE PETITIONER

Opinions Below

The opinion of the Michigan Supreme Court is reported in *People* v. *Quicksall*, 322 Mich. 351, and also appears in the printed record at page 95. The trial judge's opinion, not officially reported, is set forth in the record at page 28.

Jurisdiction

The decision of the Michigan Supreme Court affirming the trial court's denial of petitioner's motion for leave to

file a delayed motion for new trial was rendered on October 4, 1948 (R. 95). Petitioner's application for leave to appeal was filed November 8, 1949, and, treated as a petition for a writ of certiorari, was granted February 28, 1949 (R. 102). The jurisdiction of this Court rests upon 28 U. S. C. (1948 revision) §§ 1257(3) and 2101(c).

Questions Presented

1. Whether the conviction and sentencing of petitioner for first degree murder without affording him the assistance of counsel, or advising him of his right thereto, was a denial of due process in the circumstances revealed by the record, including the following:

(a) petitioner's sickness at the time of examination, arraignment, and trial;

(b) the haste with which the proceedings were consummated;

(c) the failure to inform petitioner of the consequences of his plea of guilty and of his rights;

(d) petitioner's subjection to a trial as to the degree of his offense, during which he was not apprised of his right to remain silent, the prosecutor was allowed prejudicial latitude in the introduction of evidence, and petitioner was neither informed of nor exercised his rights to cross-examine and to introduce evidence in his behalf.

2. Whether the courts below have adequately considered petitioner's claims that he was held incommunicado, that his plea of guilty was the result of fear and of misrepresentation by state officers as to the sentence he would incur, and that he was otherwise denied due process of law.

Statement of Facts

Certiorari was granted in this case (R. 102) upon an application filed *pro se* and containing in substance the fol-

lowing material allegations: that petitioner, tried for first degree murder in Michigan, was denied the right to assistance of counsel; that in approximately one hour he was arraigned, convicted, and sentenced to life imprisonment; that he was without legal assistance throughout these proceedings and was never advised of his right to counsel; that, though the charge against him was serious and complicated, the court did not explain the consequences of the plea of guilty; that no evidence was introduced in petitioner's behalf at the trial, nor was he advised of his right to cross examine the prosecution's witnesses.

On July 3, 1937, a complaint was filed in the Municipal Court of Kalamazoo, Michigan, charging murder without specification of degree. It alleged (R. 19):

> "On the 2nd day of July, A. D. 1937, at the Township of Pavilion in said County, Charles Quicksall, feloniously, wilfully and of his malice aforethought, did kill and murder one Grace Parker; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the People of the State of Michigan."

On the basis of said complaint a warrant was issued for the arrest of petitioner (R. 20).

In the interim between July 2, the day of the alleged crime, and July 15, the date on which the warrant was returned and filed, petitioner had been a hospital patient under police guard, suffering from a serious gunshot wound in the chest (R. 29, 63, 77). In the proceedings below petitioner alleged in substance, and the record in no way refutes, that during his hospital stay he was bedridden and that pain-killing and sleep-producing drugs were administered (R. 49, 51, 63);[1] that he was without funds (R. 62, 39); and

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[1] Since petitioner was without counsel until present counsel was appointed by this Court, the record made below by petitioner is not complete. The hospital record, for example, was not introduced into evidence. It has been examined, however, and shows that morphine was ad-

that his nearest sources of assistance were a sister and sister-in-law in Ohio (R. 62). The record fairly imports, moreover, that petitioner received no visitors nor had any contact with persons other than police and attendants while in the hospital (R. 10-11, 34, 36, 51, 62, 63).

On July 15, 1937, petitioner, while still very sick (according to his repeated and unchallenged protestations to the trial court during the hearing on his 1947 motion for new trial; see *infra*), was taken from the hospital to the Municipal Court of Kalamazoo, where he waived examination and was bound over for trial (R. 23). The Calendar Entries show that the next morning, July 16, 1937, at 9:30 A. M., petitioner was arraigned, and his plea of guilty was accepted by the court (R. 1). At 10:45 the same morning "Proofs [were] taken and respondent sentenced to Southern Michigan State Prison at Jackson and there [to] be confined in solitary confinement at hard labor for the rest of his natural life" (*ibid*).

The language of the information upon which said arraignment was based was identical with that of the complaint, *supra*, charging murder without specification of degree (R. 17-18).

Throughout these proceedings, petitioner was at no time offered counsel, informed of his right to counsel, or advised by counsel. Neither did he waive counsel.

The only evidence in the record regarding the circumstances of the alleged killing of Grace Parker was elicited during the examination of four prosecution witnesses and the colloquy between petitioner and the judge at the hearing to determine the degree of murder (R. 64 *et seq.*). Such hearing is required by Michigan law after a plea of guilty

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ministered, and that petitioner was not allowed to sit up in a chair until July 12. It further shows that when he left the hospital, he was discharged as "improved," not as "recovered."

to a charge of murder, Michigan Penal Code, § 318 (Mich. Stats. Ann. § 28.550); *People* v. *Martin*, 316 Mich. 669.

It should be noted that of the 18 witnesses endorsed on the information (R. 18) only four were called to testify, and that there was no cross-examination of these four prosecution witnesses and no attempt to elicit evidence in petitioner's behalf. Nor was petitioner informed of his rights in these regards.

The statutory examination on degree of murder began with the swearing of Horace R. Cobb as the first prosecution witness. At this point the trial judge interrupted to state that he had accepted petitioner's plea of guilty "to a charge of murder" after having ascertained from petitioner "the details of this homicide as claimed by him" and after having satisfied himself that the plea was made "freely, understandingly and voluntarily" (R. 64-65).

The judge made no mention, at this or any other time, of having informed petitioner of the consequences of his plea of guilty, or of any of his rights in the premises. Moreover, the clear import of the record is that the judge did not so inform petitioner.

The examination of Cobb elicited that he was one of the county coroners, that he had performed an autopsy on the body of the deceased, and that he had ascertained death to have been caused by a bullet entering the chest from the front and passing through the heart (R. 65-66).

Mrs. Jessie Pierce, the next prosecution witness, testified that she was a neighbor of the deceased and that the deceased was her best friend. In response to a question by the prosecutor as to whether she had not had "something called to your attention * * * about some trouble that had happened over at the Parker cottage," Mrs. Pierce answered that Mrs. Parker had said to her on the morning of July 2 that she "wanted to have a showdown with this

party" (petitioner) and that "she was going to forbid him to come around there" (R. 67-68).

Mrs. Pierce then testified that petitioner had been living with the deceased and her husband until a few days prior to July 2; that the deceased's daughter had come to the witness on the morning of July 2 and "said that Charley wanted to see" her; that she went to the Parker place "around 10:30 or 11" and "he [Charley] wanted to know if I would go to the neighbor's and call up and get a case of beer," but that she refused to do so "because we didn't believe in it." She further testified that "everything was peaceful over there then," but that later Mrs. Parker's daughter, who had just been sent by the witness to the Parker cottage to "get her mother to come over and have lunch with us," "came screaming out and told me that Charley had shot her mother" (R. 68-69).

After receiving this information, Mrs. Pierce testified that she started over to the Parker home, heard a shot, turned around and went instead to a neighbor's and had her call the police, and then "went back to Mrs. Parker's" (R. 70). A Mrs. Ketter was there when she arrived, and someone else "but I don't know who it was" (R. 70-71).

Mrs. Pierce said that she spoke to Mrs. Parker, having to "talk to her quite a few times before I could get an answer out to her, and then I repeated two or three times and I asked her who shot her, and she said 'Charley did' " (R. 71). The witness further testified that "I didn't know she was quite so bad, and she said 'No, Jessie, I am going because it is all muddy water before my eyes' " (R. 71-72). This last statement of Mrs. Parker was apparently not made until some time after the assertion [illegible] who had shot her.

In regard to the condition of [illegible]ioner at the time, Mrs. Pierce said that he "was lying o[illegible]he floor shot," with a

wound in the center of his body "over the stomach," and that he "was moaning and groaning and after that he was quiet" (R. 72).

Mrs. Pierce also testified as to the position of the wounded people in the room, Mrs. Parker on the bed and petitioner "not quite a foot from the bed" (R. 73). During her testimony she identified a small revolver as one she had seen lying on the bed (R. 71, 73).

The prosecution next swore Mrs. Cora Ketter, another neighbor of the deceased, who said she had gone to the Parker cottage after hearing from Mrs. Pierce that there was trouble there; she observed no one in the Parker cottage besides Mrs. Parker and petitioner; "Mrs. Parker was lying on the bed and Mr. Quicksall was lying on the floor" beside the bed; each had been shot on the left side; Mrs. Pierce had asked Mrs. Parker who shot her and she had said "Charley"; Mrs. Parker had later "made the remark that she was going to die" (R. 73-75).

Mrs. Ketter stated that petitioner was unconscious all the while she was in the Parker cottage (R. 75).

Charles Conner, a deputy sheriff of Kalamazoo County, was the fourth and last prosecution witness. He testified that he had gone out to the Parker cottage with Mr. Parker, the husband of the deceased, in response to a report from Parker, and that they arrived "right close to noon" (R. 76).

His testimony included the following: "We found Mrs. Parker lying on the bed, and immediately adjacent to the bed on the floor was Charles Quicksall"; each of them had a bullet wound in the left chest and was unconscious; "Doctor Gelding was there and handed me a gun wrapped in a handkerchief, saying that he had picked it off the bed"; the witness assisted in getting Mrs. Parker on a stretcher and out of the house, and then "went over to call for the police ambulance to come to get Quicksall" (R. 77).

Conner then testified to having found a note "on the dresser in the bedroom" (R. 77). This note was immediately offered in evidence (R. 77-78):

> "Mr. Tedrow: We wish to offer this in evidence, your Honor.
>
> "The Court: Do you know anything about the handwriting?
>
> "Mr. Tedrow: It is signed.
>
> "The Court: You may read it into the record.
>
> "Mr. Tedrow (Reads): 'July 2, 1937. I am dying, Grace and I together, because we cannot live apart. Charles Quicksall.'"

There was no further testimony from any of the witnesses regarding the above note, except for statements by Mrs. Pierce that she had not seen any such note in the Parker cottage (R. 69, 73).

The prosecutor having rested, the trial judge abruptly addressed petitioner (R. 88):

> "All right, Quicksall, you may stand up here."

The judge proceeded to recount his version of an unreported previous interview with petitioner, and to elicit affirmances by petitioner of the correctness of the judge's remarks. This colloquy began with the following assertion and response (R. 88):

> "Q. • • • That you were born in Mansfield, Ohio, in 1893; left school in the eighth grade at the age of sixteen; that you have been a laborer and a cook most of your adult life; that you lived in the home of Mr. and Mrs. Parker in Toledo before coming to Kalamazoo; that they moved to Kalamazoo in 1935, and that you came here with them; is that right?
>
> "A. Yes, sir."

Similar affirmances were then given to the judge's statements that petitioner had been twice married and divorced;

had been "convicted in this Court of breaking and entering and sentenced by this Court to Jackson" in 1932; and, after coming to Kalamazoo with the Parkers in 1935, had been arrested and taken back to Ohio on a non-support charge under which he was convicted and sentenced to from one to three years (R. 88-89). After serving the Ohio non-support sentence, petitioner returned to Kalamazoo, resumed his abode with the Parkers, and, as the judge put it, "became intimate" with Mrs. Parker [2] (R. 89).

The trial judge then elicited "yes, sirs" to the following recitals: that three years before the shooting "you and Mrs. Parker made an agreement that if you and she ever got caught in your unlawful intimate relationship that you would die together"; that about a week before the shooting petitioner had left the Parkers "upon the insistence of Mr. Parker"; that he had secured a job at a nearby filling station; that the night before the shooting he drank beer with the Parkers at a beer garden and Mrs. Parker had asked him to come to her home the following morning, "presumably to go fishing" (R. 89-90).

Petitioner similarly affirmed the judge's statements that "you went to her home the following forenoon; her husband was absent, of course?" "You told me that you took six bottles of beer with you?" "And you and Mrs. Parker drank the six bottles of beer?" (R. 90). The judge did not ask, and there is nothing in the record to show, how much liquor was drunk in addition to the beer petitioner brought, nor what effect the drinking had on the parties and the events of the fatal morning.

Affirmances were subsequently obtained to the following statements: that Mrs. Parker had told petitioner "her hus-

[2] "Q. That thereafter, if not before, you and Mrs. Parker became intimate?
"A. Yes, sir.
"Q. Probably before, wasn't it?
"A. Yes, sir." (R. 89).

band was talking about leaving her and getting a divorce"; that "she then asked you to keep your agreement with her that you and she should die together"; that she then produced a revolver and "at her request you picked it up and shot her"; and that petitioner then shot himself (R. 91).[3]

At the conclusion of the "interrogation" of petitioner, the trial judge determined the crime committed to have been that of murder in the first degree, and sentenced petitioner to life imprisonment (R. 92-93). In finding the homicide to have been deliberate and premeditated, as required by the statute on first degree murder (Penal Code, § 316 [Mich. Stats. Ann. § 28.548]), the judge relied heavily on the colloquy with petitioner regarding a "suicide pact" (R. 92).

On April 18, 1947, approximately ten years after his confinement under the above conviction and sentence had begun, petitioner filed, in proper person, a motion for leave to file a motion for new trial. This motion (R. 33-35), prepared in prison, set forth as reasons for a new trial that petitioner was not guilty of the offense charged against him (R. 33, par. 3); that he had been denied the right to assistance of counsel (R. 33, par. 4); that his plea had been entered "because of misunderstanding, through the effect of misrepresentation" (R. 33, par. 4); and that while in custody he had been denied the right to consult with counsel, friends, or relatives, or to call them by telephone (R. 34, par. 1).

In the affidavit (R. 35-39) accompanying this motion, petitioner alleged facts in support of the above grounds for new trial, including the following: that he had tried while at the hospital to use the telephone to reach friends and relatives in order to get help and counsel but was denied such right (R. 36, par. 3); that the sheriff and prosecutor had told him he had better plead guilty and that if he did he would receive a sentence of only two to 15 years (R. 36, par. 4); that the

[3] In the 1947 proceedings on motion for new trial, petitioner denied that he shot either Mrs. Parker or himself (R. 48, 59).

prosecutor had informed him he was in danger of having acid thrown in his face by the husband of the deceased (R. 36, par. 5); that he was taken from the hospital on July 15, 1937, to the Municipal Court for preliminary examination, and the following day taken into the Circuit Court where the prosecutor said "Your Honor, Charley wants to plead guilty and get this over with" (R. 37, par. 2); that in approximately one hour he was tried, convicted, and sentenced (R. 37, par. 2); that he was not informed that if he pleaded guilty he would be sentenced to life imprisonment (R. 37, par. 3); that his plea of guilty was caused by fear and by the aforesaid misrepresentation (R. 37, par. 4); and that his failure to appeal and his delay in moving for a new trial was occasioned by lack of funds, and by the necessity of making arrangements to secure funds, a transcript and other papers, and assistance in preparing his cause—all of which involved extensive correspondence (R. 38-39).

On the basis of the above motion and affidavit, the trial judge (the same judge that had originally convicted and sentenced petitioner, since deceased) granted a hearing (R. 46 *et seq.*). At this hearing the petitioner said (R. 48):

> "Well, in the first place, I wasn't guilty of the crime that I was charged with, of first degree murder. I was under the impression when I pleaded guilty that I was to plead guilty to manslaughter. That was what was promised me in the hospital at the time I was there, and if I had knew I was going to be charged with the crime of first degree murder, I sure never would have pleaded guilty."

The petitioner further stated (R. 48-49):

> "Then he tell me—the Prosecutor and he both tells me that they had such an awful hard time of keeping Mr. Parker from coming in and throwing acid on me, and naturally they put more fear into me than what it was, lying there [in the hospital] with a bullet in me,

pretty sick, so when they said if I would consent to plead guilty to manslaughter that they would see that I wouldn't get more than two years—or less than two years or more than fifteen, I figured that would be the best way out and consented. *When I got into Court Mr. Tedrow—he pleaded guilty for me. I never opened my mouth, but I still under the impression that I was getting charged with manslaughter until the Court read off the sentence.*" (Emphasis supplied.)

The printed record discloses the following with reference to the 1947 hearing (R. 61):

"(Charles W. Struble and Harry Ryskamp were here sworn as witnesses and testified.)"

This record does not contain the testimony of either of these persons; nor does it contain a narrative statement or summary of their testimony. Nor does it state by whom or for what purpose they were called. However, the trial judge, in his opinion denying the motion of petitioner, relied on the testimony of these two persons and referred to it (R. 29, 32). Furthermore, the Michigan Supreme Court relied on the testimony of these persons in its opinion. It referred to the Ryskamp testimony, saying that it was "disclosed by the record" (R. 98). It paraphrased the Struble testimony at some length (R. 99). We are informed that the Justice who wrote the opinion of the Michigan Supreme Court requested and secured from the trial court a typewritten copy of this testimony. The testimony of Ryskamp and Struble is set forth in the response of the Solicitor General of Michigan to the application for certiorari (Response, pp. 18-22). It would appear that the testimony of these two persons is not a part of the record in this case. Perhaps this testimony should be referred to here, so that the Court may be informed with respect to it, if consideration thereof is deemed appropriate.

The testimony of Ryskamp, one of petitioner's guards at the hospital, in so far as material to the present issues, was as follows (Response, p. 22):[4]

> "* * * I was unable to get much information from prisoner until about 5 A. M. [July 3, 1937, the morning after the shooting]. He then apparently felt better after his night's rest and seemed willing to talk as follows: 'How long will I have to lay here? I wish * * * it had taken effect on me like it did on her. If I get over this it will mean life for me anyway.' * * * He then had a bad coughing spell, so I stopped questioning him * * *."

This testimony was relied upon in the opinion of the trial judge denying petitioner's motion, to show that petitioner "well realized that he was guilty of murder and that he would be sentenced for life" (R. 29, 32).

The testimony of Struble, the sheriff, (Response, pp. 18-21), bore on two claims of petitioner: that he had been denied an opportunity to have visitors or to use a telephone or otherwise contact friends in order to get a lawyer, and that his plea of guilty was the result of fear and of misrepresentation as to the sentence which would be imposed. As to the first of these claims, Struble said that he had no knowledge of anyone informing petitioner that he could not have visitors, use a telephone, or otherwise obtain assistance necessary to getting counsel. It is pertinent to note that this testimony did not contradict petitioner's earlier assertion at the hearing that he asked one of his guards at the hospital if he "could have somebody call up for me," but "He says he wasn't allowed to let anyone in to visit me, talk to me or use the telephone" (R. 51). Following this assertion, the trial judge asked (*ibid.*):

> "Q. Who was that?
> "A. The deputy sheriff.

[4] Ryskamp, although his name was endorsed upon the information, was not called as a witness in the 1937 proceedings.

"Q. Who was it?

"A: I don't know his name. This gentleman here was on in the evening, but I don't recall who the man was in the day time.

"Q. Mr. Ryskamp was on in the evening?

"A. Yes, sir.

"Q. How many hours,—eight hours?

"A. I couldn't say. I was asleep most of the time. They give me shots to put me to sleep. I couldn't call anybody."

In the same vein, petitioner further stated (R. 63):

"Your Honor, I couldn't get in touch. I couldn't get out of bed and use a telephone. I asked to have somebody call, but—I don't know who gave the order, but the man that was on guard told me it was the Prosecutor and Sheriff."

The trial judge made no effort to ascertain who petitioner's day guard at the hospital had been so that he might be questioned, though certainly either Struble or Ryskamp had this information available.

The testimony of Struble concerning petitioner's claim of misrepresentation was as follows (Response, pp. 19-20):

"Q. [by the trial judge]. He says in his affidavit that he was advised by the Sheriff and Prosecuting Attorney that he better plead guilty to the charge of manslaughter, and that he, the Prosecuting Attorney, would see that he automatically would receive a sentence of two to fifteen years. Did you ever hear of anything like that?

"A. I never did.

. . . . . .

"Q. He says under oath that he was not informed by the Sheriff or Prosecuting Attorney that if he entered a plea of guilty he would be sentenced to life imprisonment. Of course you didn't know what he would be sentenced?

"A. I didn't know."

The trial judge asked no other questions regarding what representations, if any, were made to petitioner by the sheriff or in his presence. The sheriff admittedly had talked to petitioner before the plea of guilty (Response, p. 18). The trial judge in his opinion denying petitioner's motion did not rely upon Struble's testimony as controverting petitioner's claims of misrepresentation.

Petitioner's brief cross-examination of Struble included the following (Response, pp. 20-21):

> "Q. Mr. Struble, when I was in the hospital you recall the story of the acid—coming up there and throwing acid in my face?
>
> "A. Such a report, yes."

The prosecutor, Tedrow, was not available for examination upon the hearing, because of a very recent paralysis depriving him of the power of speech (R. 49).

Repeatedly, during the hearing on the motion, petitioner called to the trial judge's attention the fact that during the 1937 trial he had been a very sick man, physically and mentally unable to follow the proceedings or to defend himself.

Thus, in response to a question by the judge as to whether the information charging murder had been read to him in the original proceedings, he said (R. 50):

> "I am sure I don't really know. I am telling you the honest truth. I came out of the hospital right to the county jail and from there to the Municipal Court and from there up here. I was very sick when I came into your courtroom."

And again (R. 51):

> "A. • • • I was asleep most of the time [in the hospital]. They give me shots to put me to sleep. I couldn't call anybody.

"Q. Well, you weren't asleep when you were in this Court?

"A. I was very sick, your Honor. I was probably not asleep, but very sick."

And again (R. 55):

"A. I didn't have an [sic] comment, your Honor, to anything."

And again (R. 56):

"A. I was pretty sick, as I explained to you."

And again (R. 58):

"A. I sure must have been out of my head when I was telling—answering those questions."

The trial judge gave no apparent consideration to this alleged incapacity of the petitioner, either at the hearing on the motion or in the opinion (R. 28-33) he rendered in denying the motion.

Several times during the 1947 proceedings, at the hearing and in moving papers, petitioner protested his innocence of the crime for which he was convicted (R. 9, 13, 14, 33, 35, 36, 37, 38, 48). At one point he told the trial judge of an interview occurring while he was in the hospital, during which he had insisted to the prosecutor and sheriff, in the face of their pressing accusations, that the shooting was an accident and that he "never even had hold of the gun" (R. 48).

The hearing on the motion concluded with the following (R. 63):

"The Court: * * * I can't decide it this moment. I will give it time and dispose of it. I would like to see the opinion of the Supreme Court in the Adrian case. [The reference is to *DeMoerleer v. Michigan*, 329 U. S. 663.] It hasn't come through yet in the advance sheets

and I would like to see it before I dispose of this, because as I view this, that is the only possible question that could be worthy of serious consideration in this case, would be that you pleaded guilty and were sentenced the same day. You were not denied the right of counsel; nothing in the history and the record in this case to show that you were denied an opportunity——

"Defendant (Interrupting): Your Honor, I couldn't get in touch. I couldn't get out of bed and use a telephone. I asked to have somebody call, but—I don't know who gave the order, but the man that was on guard told me it was the Prosecutor and Sheriff.

"The Court: How long had you been out of the hospital when you were brought into this Court?

"Defendant: I left the hospital on the 15th; the following day.

"The Court: Well, is there anything further that you know of Mr. Barber?

"Mr. Barber [apparently the prosecutor]: No, sir.

"The Court: All right. Well, then that concludes our hearing and he may be returned to Jackson and I will dispose of this within a few days and mail you a copy of the Court's opinion, whatever it is. All right."

In his opinion denying the motion, the trial judge said (R. 32):

"Even now Defendant offers no denial of having killed Mrs. Parker. The proposed motion to vacate judgment has no merit.

"Having in mind the decision of the United States Supreme Court reversing the Michigan Supreme Court in People vs. DeMeerleer, it cannot be seriously urged that this Defendant did not understand the consequences of his plea of guilty. Neither can it be said that there was any confusion in his mind. His answers to the Court's questions dispose of that. The charge of murder is serious indeed, but there is nothing complicated about killing a woman by gunshot."

An appeal from this denial of his motion was taken by the petitioner, *pro se*, to the Michigan Supreme Court. In

his Reasons and Grounds for Appeal (R. 9-11) and in the accompanying affidavit (R. 12-15), both of which papers were filed July 22, 1947, the petitioner set forth in substance the same grounds previously presented to the trial court. Included were the following allegations:

> "* * * the trial Court failed to advise Defendant of the consequences of his plea and did not advise defendant of the difference between first degree Murder, second degree Murder and Manslaughter * * *" (R. 10, par. 3);
>
> "* * * he had no counsel to inform him of the nature of the degree to which he was pleading to and that at no time prior to the entering of such plea, did he receive any explanation of the nature of the penalty provided by law, for such offense, and had no knowledge of the effects that his plea of guilty would have on his life and liberty. Had he been informed of the nature of the degree or offense of which he was charged, Deponent could not, and would not have entered a plea of guilty" (R. 12-13);
>
> "* * * he was not apprised by the trial Court of the fact that he had Constitutional Rights, and that he doesn't have to answer any questions that would involve him in the alleged crime of which he was being tried" (R. 13, par. 2).

In affirming the decision below, the Michigan Supreme Court said (R. 100):

> "In determining whether one convicted of crime has been denied his constitutional rights in the manner above indicated, it is necessary in each instance to give careful consideration to the factual background of the particular case. [Quoting from *Wade v. Mayo*, 334 U. S. 672, and *Betts v. Brady*, 316 U. S. 455.]
>
> "We have already outlined quite in detail the factual background of the instant case; and under the circumstances disclosed by this record we are convinced that

defendant was not deprived of any of his constitutional rights."

The court stated in conclusion (R. 102):

"After a careful consideration of the various contentions made by defendant, we are brought to the conclusion that there is no merit to his motion for leave to make a delayed motion for a new trial. The holding of the circuit court to that effect is affirmed."

Summary of Argument

I. Petitioner's claim that he was denied due process of law in contravention of the Fourteenth Amendment was made in the courts below and was decided on the merits by them; and it has been made in this Court. The denial of the claim by the Supreme Court of Michigan is properly before this Court for review.

II. The conviction and sentencing of petitioner for first degree murder without affording him the assistance of counsel was a denial of due process under the circumstances disclosed by the record.

Whether or not the right to an offer of counsel exists as a matter of law in every first degree murder case, the present record clearly demonstrates that the proceedings resulting in petitioner's conviction and sentence, in which petitioner was without counsel, and was not advised of his right to counsel, constituted a denial of due process.

A. Petitioner was poorly educated, inarticulate, uninformed as to legal rights and procedure, and without funds or help. He was physically and mentally incapable of exercising his limited capacities at the time of preliminary examination, arraignment, trial, conviction, and sentence. From the day of the alleged crime to the day of his examination, a period of two weeks, he had been confined in a hospital, as a prisoner, suffering from a serious bullet wound. Drugs had

been administered to ease the pain. It is clear from the record that he was neither physically nor mentally capable of defending himself in the proceedings.

B. Petitioner was rushed through examination, arraignment, conviction, and sentence, and was denied a fair opportunity to meet the charge against him.

It is a fundamental principle of due process that the accused in a criminal case must have a reasonable opportunity to obtain the assistance of counsel and to prepare his defense. Obviously in the instant case the petitioner never had such opportunity because he was physically and mentally incapable of so acting and there were no friends to assist him throughout the period of his confinement in the hospital and at the very time of his examination, arraignment, trial, conviction and sentence.

He was taken from the hospital to his examination. The very next day, in little more than an hour, he was arraigned, was compelled to plead and to go through a technical trial concerning his degree of guilt, and was convicted and sentenced.

The proceedings in this matter consumed much less time than the similar proceedings in *DeMeerleer* v. *Michigan*, 329 U. S. 663, wherein undue judicial haste was one of the grounds upon which this Court relied. Moreover, the facts noted above concerning petitioner's condition and circumstances, render the extreme speed even more prejudicial, effectively denying petitioner a fair opportunity to meet the charge against him.

C. Petitioner pleaded guilty without advice as to the consequences of his plea, the nature of the charge against him, possible defenses thereto, or any of his related rights.

The record shows that the trial judge failed to advise petitioner as to these matters. Also it affirmatively appears that the trial judge thought it sufficient that petitioner knew

that the charge against him was murder (even though the degree of the offense had not been specified in the information). The trial judge clearly underestimated the advisory duties owed an uncounselled defendant in a first degree murder case.

D. In Michigan, it is mandatory after a plea of guilty to a charge of murder, that the trial court proceed to a determination of the degree of the crime on the basis of testimony taken in open court. Penal Code, § 318 (Mich. Stats. Ann. § 28.550); *People* v. *Martin*, 316 Mich. 660.

As in *DeMeerleer* v. *Michigan*, 329 U. S. 663, petitioner suffered grave prejudice in the course of this statutory hearing, by reason of ignorance and lack of assistance from counsel or court. He was deprived of his right not to be a witness against himself. The prosecutor was allowed complete and prejudicial freedom in examining the four witnesses he chose to call from among the 18 endorsed on the information. Incompetent evidence was admitted. There was no cross-examination of the prosecution witnesses and no introduction of evidence in petitioner's behalf. The trial judge at no time apprised petitioner of any of his rights, nor made any effort to protect his interests.

The errors committed were of the same nature as those prompting reversal in *Gibbs* v. *Burke*, 337 U. S. 773.

E. At the hearing on petitioner's motion for leave to file a delayed motion for a new trial, petitioner contended, among other things, that he had been held incommunicado, and that his plea of guilty was brought about by misrepresentations as to the sentence which would follow. The trial judge made no adequate inquiry into the validity of these claims.

III. There are no facts in this case which would establish that petitioner waived his right to counsel under the stand-

ards which this Court has announced. See *Johnson* v. *Zerbst*, 304 U. S. 458, *Von Moltke* v. *Gillies*, 332 U. S. 708. The trial court did not find that petitioner waived his right to counsel; and though the opinion of the Michigan Supreme Court contains some language which might be regarded as a vague intimation of possible waiver, there was no actual holding of waiver. Clearly the circumstances do not constitute waiver.

IV. The courts below applied improper standards in determining whether or not petitioner was denied due process. Moreover, they seemed intent upon matters pertaining to the question of guilt, rather than as to whether due process was observed.

Argument

I. *Petitioner's Claim of Federal Right was Properly Made Below and is Properly Before this Court*

In the courts below, petitioner made the basic claim that he had been denied counsel in violation of his rights under the Fourteenth Amendment. The claim was presented in the form of a motion for leave to file a delayed motion for a new trial, this being the approved state procedure and precisely the same as that employed in *DeMeerleer* v. *Michigan*, 329 U. S. 6[illegible], reversing 313 Mich. 548. Both the trial court and the Michigan Supreme Court decided the motion on the merits.

In his application for certiorari, petitioner has presented the same basic claim. Technical oversights or inadequacies in the petition should be liberally regarded in view of petitioner's layman-pauper-prisoner status at the time he drafted and filed it. *Tomkins* v. *Missouri*, 323 U. S. 485, 487; *Price* v. *Johnston*, 334 U. S. 266, 292; *Rice* v. *Olson*, 324 U. S. 786, 791-92.

II. *The Conviction and Sentencing of Petitioner for First Degree Murder Without Affording Him the Assistance of Counsel was a Denial of Due Process Under the Circumstances Disclosed by the Record*

This Court has never held that an indigent accused charged with murder does not have the right to an offer of counsel. See *Tomkins* v. *Missouri*, 323 U. S. 485; *DeMeerleer* v. *Michigan*, 329 U. S. 663; *Hawk* v. *Olson*, 326 U. S. 271; *Marino* v. *Ragen*, 332 U. S. 561; *Carter* v. *Illinois*, 329 U. S. 173 (wherein the majority held the accused to have waived counsel); *Avery* v. *Alabama*, 308 U. S. 444 (wherein the Court held that counsel had been effectively appointed). Only in the *Avery* case had the accused been sentenced to death.

It is not clear whether the right to an offer of counsel in such cases is predicated upon an application of the doctrine of *Betts* v. *Brady*, 316 U. S. 455, or upon the recognition of an absolute right to such an offer where the crime charged, *viz.*, murder, is subject to capital punishment. Recent decisions contain language suggesting the right to be an absolute one in capital cases. See *Bute* v. *Illinois*, 333 U. S. 640, 676, 680 (wherein both the majority and minority opinions cite, among other cases, *DeMeerleer* v. *Michigan*, *supra*, for the "absolute right" proposition, despite the fact that Michigan does not permit capital punishment for first degree murder); *Uveges* v. *Pennsylvania*, 335 U. S. 437, 440-41; *Townsend* v. *Burke*, 334 U. S. 736, 739. Perhaps in citing the *DeMeerleer* case as above indicated in the *Bute* opinions, the Justices had in mind that first degree murder is the crime most typically resulting in capital punishment, and therefore, for the purpose of determining right to counsel, is to be treated as a "capital offense."

It is submitted that where an indigent layman is tried for first degree murder, the gravity and complexity of the charge render the lack of counsel implicitly unfair.[5] In the present case, however, unfairness to petitioner is not merely implicit; it stands out starkly in the record as revealed below.

A. *Petitioner, an Indigent Laborer, Physically Sick, Spiritless, and Uninformed, was Unable Adequately to Protect His Own Interests at the Time of Arraignment, Conviction, and Sentence*

Mr. Justice Reed, speaking for the Court in *Gibbs* v. *Burke*, 337 U. S. 773, stated (at 780):

> "Our decisions have been that where the ignorance, youth, or other incapacity of the defendant made a trial without counsel unfair, the defendant is deprived of his liberty contrary to the Fourteenth Amendment. Counsel necessary for his adequate defense would be lacking."

Both "ignorance" and "other incapacity" were present in this case.

The record clearly indicates that petitioner was uneducated, inarticulate, and uninformed as to legal rights and procedure. He was without funds (R. 39, 62). He "left school in the eighth grade at the age of sixteen," and was a "laborer and a cook" most of his adult life (R. 88). It is illuminating that after ten years in prison, during which he had studied and improved himself, he still was unable to express himself with clarity.

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[5] The Supreme Court of Michigan has recognized the soundness of this principle, and even gone beyond it, by adoption of Rule 35A (318 Mich. xxxix-xl), effective September 1, 1947, which prospectively provides that upon any charge of felony the trial court "shall advise the accused that he is entitled to a trial by jury and to have counsel, and that in case he is financially unable to provide counsel the court will, if accused so requests, appoint counsel for him." Rule 35A, Section 1.

These shortcomings were extremely aggravated by the fact that petitioner was taken from a hospital bed into court, while physically and mentally debilitated. The record discloses the following facts in regard to petitioner's condition at time of trial:

On July 2, 1937, petitioner was seriously wounded by gunshot near the center of the chest, above the abdomen (R. 72, 75, 77). When found, he was unconscious (*ibid.*). He was taken to the hospital the same day as a police prisoner, where he remained until July 15, 1937, when he was taken to the Municipal Court of Kalamazoo for preliminary examination (R. 29, 37, 50, 63). The next morning, July 16, he was arraigned, convicted, and sentenced.

The record of these proceedings does not show a word spoken by petitioner until he was ordered to stand before the bench for interrogation by the judge (R. 88). During that long interrogation, he answered typically "yes, sir," without more, to the judge's leading questions. His utter passivity frames a picture of an untutored layman, unaware of defenses against a complicated charge or of distinctions between degrees of included offenses, and too sick to venture opposition.

There is nothing in the record to suggest that anyone, at the time of the 1937 proceedings, made any effort to ascertain whether petitioner was in satisfactory physical or mental condition to safeguard his own interests in court. Such physical condition as permits discharge from a hospital (particularly of a police prisoner) is a very different thing from that physical well-being essential to defense of one's rights in court. And the difference becomes the greater where the accused is an uneducated laborer who in the best of health is without knowledge as to his rights, and therefore has little more with which to defend himself than the will to resist, in this case wholly sapped.

Time and again at the 1947 hearing on his motion, petitioner directed the trial judge's attention to his sickness during the 1937 proceedings. Thus, in response to the judge's question as to whether the information had been read to him on his arraignment, petitioner said (R. 50):

> "I am sure I don't really know. I am telling you the honest truth. I came out of the hospital right to the county jail and from there to the Municipal Court and from there up here. I was very sick when I came into your court room."

And again a few moments later petitioner said (R. 51):

> "• • • I was asleep most of the time. [Referring to the time in the hospital.] They give me shots to put me to sleep. • • •
>
> "Q. Well, you weren't asleep when you were in this Court?
>
> "A. I was very sick, your Honor. I was probably not asleep, but very sick."

And again (R. 55):

> "Q. Then you remember the Court asking you: 'Have you any comment to make upon any of that testimony? A. No.' You remember saying you had no comment to make?
>
> "A. I didn't have an [sic] comment, your Honor, to anything."

And in response to another question by the court (R. 56):

> "I was pretty sick, as I explained to you. Maybe I didn't hear it."

And again (R. 58):

> "I sure must have been out of my head when I was telling—answering those questions."

In spite of these repeated assertions by petitioner as to his condition when arraigned and sentenced, and as to

the effect of such condition on his capacity to understand and protect his interests, the trial judge neither inquired into the facts nor made any findings upon the question. Apparently he ignored the claims because he considered them irrelevant (see R. 32, 62).

The Michigan Supreme Court, before whom petitioner never appeared, the case being presented on briefs alone, likewise ignored the claim of incapacity due to illness, and its relevance in applying the doctrine of *Betts* v. *Brady*, 316 U. S. 455. Thus, it stated in its opinion (R. 97):

> "The record made at that time [conviction and sentence] *and particularly his attitude and conduct in court in this later hearing* disclosed that he was a man of fairly keen intellect and not one who by reason of youth or adverse circumstances should have his rights carefully protected by the appointment of counsel, which, as above noted, was not requested." (Emphasis supplied.)

Obviously, the Michigan Supreme Court gave no consideration to the claims of petitioner as to his physical condition at the time of the 1937 proceedings; nor can petitioner's "attitude and conduct in court" in 1947 throw significant light upon his mental condition and capacity to defend himself ten years earlier when he was not only extremely sick and spiritless, but also less aware of his rights.

The logical and necessary implications of the test evolved by this Court for determination of the right to counsel require that physical capacity as well as mental capacity at the time of trial be the subject of inquiry. See, *e.g.*, *Gibbs* v. *Burke*, 337 U. S. 773, 780 (quoted *supra*, this section); *Uveges* v. *Pennsylvania*, 335 U. S. 437, 441; *Townsend* v. *Burke*, 334 U. S. 736, 739; *Rice* v. *Olson*, 324 U. S. 786, 788-89. In fact, no investigation of the one which ignores the other would be consistent with accepted medical principles.

We submit that in view of the nature and seriousness of petitioner's wound, the shortness of his stay in the hospital, the fact that he was taken directly from the hospital into court, and his unchallenged assertions below of sickness and incapacity at the time of the 1937 proceedings, petitioner was denied due process by reason of the failure to offer him counsel.

If this Court should be of the opinion that the facts as to petitioner's 1937 condition do not sufficiently appear from the record, then we submit that this matter should be remanded to the state courts for explicit findings as to petitioner's physical condition at the time of arraignment and sentence, and as to the effect thereof on his capacity to defend himself against a charge of murder.

B. *Petitioner Was Rushed Through Examination, Arraignment, Conviction, and Sentence, and Was Denied a Fair Opportunity to Meet the Charge Against Him*

The record in this case establishes that the petitioner was taken on July 15, 1937, from the hospital to the Municipal Court for preliminary examination. Upon appearing before the Municipal Court, examination was waived.

The very next day, July 16, 1937, he was arraigned in the Circuit Court; a plea of guilty was entered for him; the judge conferred with him in chambers; a hearing in open court was had and testimony was taken on the degree of guilt; and upon the conclusion of this hearing the court sentenced petitioner to solitary confinement at hard labor for the rest of his life. All these proceedings took place on the morning of July 16th. In the calendar of the Circuit Court the following entries appear under date of July 16 (R. 1):

> "9:30 A. M. Arraigned and information read by Prosecuting Atty. Respondent pleaded guilty to First

Degree Murder. Plea accepted by the Court and respondent remanded without bail.

"10:45 A. M. Proofs taken and respondent sentenced to Southern Michigan State Prison at Jackson and there be confined in solitary confinement at hard labor for the rest of his natural life."

Thus in little over an hour all these proceedings were commenced, carried out, and concluded. This fact also appears in the affidavits of petitioner (R. 12, 37) and is uncontroverted.

A defendant is entitled, as a fundamental element of due process, to a "fair opportunity to secure counsel." *Powell* v. *Alabama,* 287 U. S. 45, 53, 68-69. In the instant case petitioner was confined to the hospital, suffering from a serious bullet wound, bedridden and under the influence of drugs to alleviate pain. He was alone, friendless, and without anyone to help him. Does it need to be stated that a person under these conditions of physical and mental incapacity is not in a position to arrange for counsel and to prepare his defense? Petitioner's preliminary examination before the Municipal Court followed immediately upon his release from the hospital, and then within twenty-four hours all of the proceedings above referred to, down to the final sentence, were carried out. This is a clear case of denial of a fair opportunity to obtain counsel and a fair opportunity to prepare one's defense.

It is also to be borne in mind that during this precipitous, peremptory procedure he was not even advised of his right to secure counsel (R. 51). Such failure to inform an accused has been condemned by this Court in *DeMeerleer* v. *Michigan,* 329 U. S. 663, 664, 665, and other cases referred to in this brief.

In the *DeMeerleer* case the "quick justice" factor was one of the grounds for this Court's reversal of the state conviction. Yet, in that case there was a recess between the plea of guilty and the statutory hearing as to degree

of murder (see *People* v. *DeMeerleer*, 313 Mich. 548, 550),[6] whereas here there was no interruption.

The unfairness to petitioner of such headlong proceedings is aggravated by the facts of his situation at the time of such proceedings. If hasty procedure is unfair to an accused person who is well, it is much more unjust in the case of one who is ill. The petitioner, physically and mentally incapable of helping himself, did not even have an opportunity to secure help from others. The record fairly imports that he had no visitors in the hospital; he said that he was told he was not allowed visitors or use of a telephone (R. 10-11, 34, 36, 51, 63). He had no money (R. 39, 62). Thus, he had no opportunity to plan or prepare his defense. And when the charge, as here, is one of murder, involving all the technicalities of differing degrees, included offenses, subtle defenses, varying punishments, etc. (see *Tomkins* v. *Missouri*, 323 U. S. 485, 488-89, quoted *infra*, Section II, C) the prejudice to an uncounselled accused from such haste is further increased.

It is particularly significant to note the vigilant protection against unreasonable judicial haste accorded by this Court to defendants in state proceedings who have counsel. Thus, in *White* v. *Ragen*, 324 U. S. 760, a *per curiam* decision, it was said (at 763-64):

> "We have many times repeated that not only does due process require that a defendant, on trial in a state court upon a serious criminal charge and unable to defend himself, shall have the benefit of counsel, [citations omitted] but that *it is a denial of the accused's constitutional right to a fair trial to force him to trial with such expedition as to deprive him of the effective aid and assistance of counsel. Powell v. Alabama*, 287 U. S. 45; *Avery v. Alabama*, 308 U. S. 444; *Ex parte*

[6] The recess was approximately four hours. See Brief Opposing Petition for Certiorari, filed by the Attorney General of Michigan in *DeMeerleer* v. *Michigan*, No. 140, October Term, 1946, page 47.

Hawk, 321 U. S. 114, 115-116; *House v. Mayo, supra.*" (Emphasis supplied.)

And in *House* v. *Mayo*, 324 U. S. 42, it was likewise said *per curiam* (at 46):

> "We need not consider whether the state would have been required to appoint counsel for petitioner on the facts alleged in the petition. [Citations omitted.] *It is enough that petitioner had his own attorney and was not afforded a reasonable opportunity to consult with him.* The fact that petitioner pleaded guilty after the denial of his request for time to consult with his counsel, does not deprive him of his constitutional right to counsel." (Emphasis supplied.)

To the same effect, see *Hawk* v. *Olson*, 326 U. S. 271, 278.

The constitutional protection against unfair rushing of a counselled defendant should apply with even greater force to an uncounselled one. Moreover, an uncounselled accused cannot be expected to appreciate the prejudice to his rights inherent in an unguided rush through arraignment and trial, and therefore to demand pause.

If it be said that the basis for requiring that reasonable time be provided a counselled defendant is that he has a constitutional right to a reasonable opportunity to consult with his lawyer, it is likewise true that an uncounselled defendant has a greater need for a reasonable opportunity to think through his own problems and to determine upon a course of action. It was stated in *Foster* v. *Illinois*, 332 U. S. 134, 137, that "process of law in order to be 'due' does require that a State give a defendant ample opportunity to meet an accusation." Typically, an uncounselled accused has no reliable means for learning the real nature of the accusation against him or the strength of the prosecution's case until he gets into court. He is dependent, for whatever information he gets regarding these matters before he appears in court, upon the very people who will

prosecute him. The record in the present case sharply discloses the dangers inherent in such dependency (see, *e. g.*, R. 48-49). And like other human beings thrust suddenly into relatively strange and threatening circumstances, an uncounselled accused rarely thinks of all matter in his favor at first challenge. He needs time to appraise the charge and case against him, perceive strengths and weaknesses, and overcome reticence. Only then can he understandingly plead and defend his rights in any further proceedings.

The problems confronting an uncounselled defendant as a result of judicial haste are exaggerated in direct ratio both to the accused's ignorance and lack of information, and to the seriousness and complexity of the charge against him. Where the charge is murder and the accused comes to the courtroom from a two-week confinement in a hospital bed because of a serious gunshot wound in the chest, the prejudice from such speed is implicit and gross.

Specifically, the haste in the present case, interacting with the other circumstances revealed by the record, deprived petitioner of an effective opportunity to secure counsel, to consider how he should plead, to prepare his defense upon the statutory hearing as to degree of murder, and to reconsider his plea for the purpose of determining whether he should exercise his right under Michigan law to withdraw his plea of guilty at any time prior to the imposition of sentence. See *People* v. *Martin*, 316 Mich. 669, 673; *People* v. *Vasquez*, 303 Mich. 340, 342, and cases there cited.

C. *Petitioner Pleaded Guilty Without Advice as to the Consequences of His Plea, the Nature of the Charge Against Him, Possible Defenses Thereto, or Any of His Related Rights*

In *Tomkins* v. *Missouri*, 323 U. S. 485, this Court stated clearly the inherent need of an accused for counsel in meet-

ing so serious and complicated a charge as that of first degree murder (at 488-89):

> "The nature of the charge emphasizes the need for counsel. Under Missouri law one charged with murder in the first degree may be found guilty of that offense, of murder in the second degree, or of manslaughter. [Citations omitted.] The punishments for the offenses are different. [Citations omitted.] The differences between them are governed by rules of construction meaningful to those trained in the law but unknown to the average layman. The defenses cover a wide range. And the ingredients of the crime of murder in the first degree as distinguished from the lesser offenses are not simple but ones over which skilled judges and practitioners have disagreements. The guiding hand of counsel is needed lest the unwary concede that which only bewilderment or ignorance could justify or pay a penalty which is greater than the law of the State exacts for the offense which they in fact and in law committed."

Similarly, in *Hawk* v. *Olson*, 326 U. S. 271, another first degree murder case, it was said (at 278):

> "Homicide has degrees in Nebraska. [Citations omitted.] There are difficulties in the application of the rules. [Citations omitted.] The defendant needs counsel and counsel needs time."

And again in *Williams* v. *Kaiser*, 323 U. S. 471, wherein defendant pleaded guilty to a charge of robbery, the Court said, after pointing out the technical difficulties arising from the fact that the offense charged had degrees (at 475-76):

> "The decision to plead guilty is a decision to allow a judgment of conviction to be entered without a hearing—a decision which is irrevocable and which forecloses any possibility of establishing innocence. If we assume that petitioner committed a crime, we cannot know the degree of prejudice which the denial of counsel caused. See *Glasser* v. *United States*, 315 U. S. 60,

75-76. Only counsel could discern from the facts whether a plea of not guilty to the offense charged or a plea of guilty to a lesser offense would be appropriate. A layman is usually no match for the skilled prosecutor whom he confronts in the court room. He needs the aid of counsel lest he be the victim of overzealous prosecutors, of the law's complexity, or of his own ignorance or bewilderment."

Very recently, in *Uveges* v. *Pennsylvania*, 335 U. S. 437, the Court said (at 441-42):

"Where the gravity of the crime and other factors—such as the age and education of the defendant, the conduct of the court or the prosecuting officials, and the complicated nature of the offense charged and the possible defenses thereto—render criminal proceedings without counsel so apt to result in injustice as to be fundamentally unfair * * * the accused must have legal assistance under the Amendment whether he pleads guilty or elects to stand trial, whether he requests counsel or not. * * *

"* * * The record shows no attempt on the part of the court to make him [petitioner] understand the consequences of his plea. Whatever our decision might have been if the trial court had informed him of his rights and conscientiously had undertaken to perform the functions ordinarily entrusted to counsel, we conclude that the opportunity to have counsel in this case was a necessary element of a fair hearing."

These principles are applicable to this case. Petitioner was charged with the most serious offense short of treason known to Michigan law. The offense has degrees. Michigan Penal Code, §§ 316, 317 (Mich. Stats. Ann. §§ 28.548, 28.549). First degree murder "includes" the lesser offenses of second degree murder and manslaughter. *People* v. *Moshier*, 306 Mich. 714; *People* v. *Mihalko*, 306 Mich. 356; *People* v. *Treichel*, 229 Mich. 303. The criteria by which these three offenses are distinguished are highly technical.

See *People* v. *Holmes*, 111 Mich. 364, 369-74. The penalties vary. Michigan Penal Code, §§316, 317, 321 (Mich. Stats. Ann. §§ 28.548, 28.549, 28.553). The defenses to a charge of murder cover a wide range: *e. g.*, intoxication, *People* v. *Jones*, 228 Mich. 426 (in this connection it should be noted that the record in the present case reveals petitioner and Mrs. Parker to have been drinking at the time of the shootings; R. 29, 90); temporary insanity, *People* v. *Holmes*, 111 Mich. 364.

Not only was petitioner without counsel, but the record clearly shows that the trial judge did not inform him of the consequences of his plea, nature of the charge against him, possible defenses thereto, or of any of his related rights. The judge made only two germane statements while the trial was in progress. The first was interjected after the prosecution had begun its examination of witnesses in the matter of sentence (R. 64-65):

> "Just a minute. The record may show that this respondent has just offered to plead guilty and had [sic] pleaded guilty to a charge of murder; that after a full statement by the respondent in response to numerous questions by the Court in open Court and after a private interview with respondent at chambers, in both of which he has freely and frankly discussed the details of this homicide as claimed by him, the Court being clearly satisfied that the plea of guilty is made freely, understandingly and voluntarily, an order has been entered accepting such plea of guilty. * * *"

The second recital (R. 92), made upon the imposition of sentence, adds nothing here material.

The above-quoted recital falls far short of evidencing such advice by the court to petitioner as to negative the prejudice from want of counsel. But the trial judge's failure to state that he advised petitioner on essential matters is only a small part of the evidence that the judge did not so advise petitioner. The record casts sharp light.

Thus, early in the hearing on his 1947 motion for new trial petitioner asserted that his plea of guilty had been entered in the mistaken belief that he would receive a sentence of only two to 15 years, as on a charge of manslaughter (R. 48, 49). Then, after stating that his advice in this regard had come from the sheriff and the prosecutor while he was in the hospital, petitioner continued (R. 49):

> "When I got into Court Mr. Tedrow [the prosecutor] —he pleaded guilty for me. I never opened my mouth, but I still under the impression that I was getting charged with manslaughter until the Court read off the sentence."

If the trial judge's recital that the plea of guilty had been "understandingly" made was intended by him as a shorthand account of his having apprised the accused of the consequences of his plea, the nature of the charge against him, and of his related rights, it would have been natural for the judge (the same judge that convicted and sentenced petitioner) so to have asserted at this point in the 1947 proceedings. However, neither here nor at any other time during such proceedings did the judge state that he had informed petitioner in these regards or that it was his habit to so inform uncounselled defendants. Instead, he revealingly took another tack (R. 49-51):

> "Q. You were taken into Municipal Court first?
> "A. That is true, your Honor.
>
> * * * * * * *
>
> "Q. And you knew that you were charged with murder?
> "A. Yes, but, your Honor, when they [the prosecutor and sheriff] came to the hospital——
> "Q. (Interrupting): I say you knew that, that you were charged with murder?
> "A. At that time.
> "Q. The warrant was read to you in Justice Court?

"A. It was read to me there and I waived examination.

"Q. On a murder charge?

"A. That is true.

"Q. You knew you were bound over to this Court on a charge of murder?

"A. That is true.

"Q. And when you appeared in this Court the information was read to you stating that you were charged with murder?

"A. I never even heard the Prosecutor mention the charge of murder, your Honor.

"Q. Don't you remember that in this Court the Prosecuting Attorney Mr. Tedrow, stated to you the substance of the information * * * which charged that you Charles Quicksall then, theretofore, to-wit: on the 2nd day of July A.D. 1937, at the Township of Pavilion, County of Kalamazoo, feloniously, wilfully and of his malice aforethought, did kill and murder one Grace Parker. That was read to you right here in this Court, wasn't it?

"A. Your Honor, at the time I came into this Court——

"Q. (Interrupting): Wasn't that read to you?

"A. I am sure I don't really know. I am telling you the honest truth. I came out of the hospital right to the county jail and from there to the Municipal Court and from there up here. I was very sick when I came into your court room.

"Q. You were into the Municipal Court one day and in this Court the following day.

"Q. And the following day you came into this Court and you knew you were charged with murder, didn't you?

"A. That is right."

The trial court here dropped this line of inquiry, apparently content that if petitioner knew he was charged with "murder," no further knowledge on his part was required.

It is not necessary to spell out the respects in which a mere reading to an accused of a technical information (R.

17-18) charging "murder," without even indication as to degree, falls short of such guidance by the trial court as to the consequences of the plea, nature of the charge, possible defenses, and other aspects of the accused's rights as may render the lack of counsel non-prejudicial under the Fourteenth Amendment. Yet, since the trial judge in both the 1937 and 1947 proceedings was the same person, it is unlikely that he had a more sensitive appreciation in 1937 of what was necessary to protect an uncounselled defendant from his own ignorance in pleading guilty to a charge of murder than he had in 1947, ten years later.

The record contains even more conclusive evidence of the trial judge's underestimation of his function in giving aid to an uncounselled murder defendant. In his opinion denying petitioner's motion below, the judge said (R. 32):

> "Even now Defendant offers no denial of having killed Mrs. Parker. The proposed motion to vacate judgment has no merit.
>
> "Having in mind the decision of the United States Supreme Court reversing the Michigan Supreme Court in People vs. DeMeerleer, it cannot be seriously urged that this Defendant did not understand the consequences of his plea of guilty. Neither can it be said that there was any confusion in his mind. His answers to the Court's questions dispose of that. *The charge of murder is serious indeed, but there is nothing complicated about killing a woman by gunshot.*" (Emphasis supplied.)

Taking the elements of the above one at a time, on what did the trial judge rely in stating so conclusively that petitioner understood the consequences of his plea? In the same opinion, the trial judge stated:

> "On July 3rd Defendant said to Mr. Ryskamp [one of his guards at the hospital]: 'How long will I have to lay here? I wish * * * it had taken effect on me

like it did on her. If I get over this, it will mean life for me anyway. * * *" (R. 29)

"Harry Ryskamp, a guard at the hospital, testified upon the hearing of the motion, *as already stated herein, that Defendant well realized that he was guilty of murder and that he would be sentenced for life.*" (R. 32; emphasis supplied.)

There is nothing in Ryskamp's testimony to support the characterization thereof in the last-quoted passage.[7] Furthermore, the duty of a trial judge to inform an uncounselled defendant of the consequences of his plea of guilty to a charge of murder is not dischargeable by vague inferences as to what such defendant may otherwise have known. Nor can expression of fear of a possible life sentence be equated with knowledge that such is the mandatory penalty for first degree murder. The very reliance of the trial judge on such tenuous inference, to support his conclusion that petitioner was aware of the consequences of his plea, itself demonstrates the absence of better support for such conclusion. And even if petitioner knew he was charged with "murder," it cannot be presumed that he therefore knew the consequences of his plea, since the charge did not specify the degree of the offense (R. 17-18), and the statutory penalties for first and second degree murder vary in Michigan. See Michigan Penal Code, §§ 316, 317 (Mich. Stats. Ann. §§ 28.548, 28.549).

As for the trial court's statement that there was no "confusion" in petitioner's mind and that "his answers to the Court's questions dispose of that," it must be remembered that the type of "confusion" which is pertinent to the present inquiry is confusion as to nature of the charge, possible defenses, consequences of the plea, and related

[7] Ryskamp's testimony is not set forth in the printed record (see R. 61), but it can be found in the State of Michigan's response to the application for certiorari, at pages 21-22.

rights of the accused. Concerning these matters, petitioner was asked no questions by the court, and said nothing to indicate that he had any comprehension of what his rights were, or that he had rights.

The most revealing portion of the above quotation from the trial court's opinion is the last sentence: "The charge of murder is serious indeed, but there is nothing complicated about killing a woman by gunshot." All homicide is not first degree murder. Yet the trial judge clearly equated the two. Finding nothing complicated "about killing a woman by gunshot," he inferentially concluded that there is nothing complicated about a charge of murder. With this fundamental misconception, he can hardly be presumed to have adequately advised petitioner.

Nor can the unrecorded questioning of petitioner in the judge's chambers give rise to an inference that the judge there explained petitioner's rights.[8] The judge cannot be presumed to have been then free of the misconceptions and peremptory attitude which he exhibited in the courtroom. Moreover, the judge himself did not describe this interview as involving anything more than a disclosure by petitioner

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[8] In a very recent civil case, *Jorgensen* v. *Howland*, 325 Mich. 440, it was claimed by appellee, and also by the trial judge (in a written opinion on motion for new trial), that an agreement inconsistent with the error assigned had been reached between counsel and the judge in chambers. The Michigan Supreme Court said (at 446-47):

"The agreement, if made, was in violation of Court Rule No. 11 (1945) [identical with Rule No. 11 (1935)] which provides:

"'No private agreement or consent between the parties to a cause, or their attorneys respecting the proceedings in a cause which shall be denied by either party, shall be binding, unless the same shall have been made in open court, or unless evidence thereof shall be in writing subscribed by the party or his attorney against whom the same is alleged.'

"In our opinion the above rule includes agreements made in the presence of or with the trial court. One of the purposes of the rule is to prevent exactly the type of controversy as is presented in the case at bar."

"of the details of this homicide" (R. 65). In the same vein, the judge later said (R. 88):

> "When you were arraigned this morning and pleaded guilty and your plea was accepted, in the talk that was had between the Court and you here in open Court, and in the talk that I had with you privately in chambers, it is my recollection that you said in substance the following, and I am going to repeat what I recall you said to me: * * *."

Following this, there are several pages of statements by the judge of information disclosed to him off the record by petitioner, relating solely to petitioner's past life, his relationship with the Parkers, and the circumstances of the shooting (R. 88-92). It is apparent from this material that during the unrecorded questioning of petitioner the judge directed himself to ascertaining petitioner's guilt, rather than to ascertaining whether or not petitioner's plea was understandingly made. Also, the entire proceedings on conviction and sentence lasted slightly more than an hour. Only a fraction of this time could have been spent in unrecorded conference with petitioner since during the same interval petitioner and four prosecution witnesses were examined on the record. When the quantity of the above-mentioned information elicited from petitioner during such unrecorded conference is considered, it becomes apparent from the time factor alone that little, if any, effective effort could then have been made by the judge to advise petitioner of his rights.

The Michigan Supreme Court was equally insensible to petitioner's constitutional rights in this regard. One of petitioner's Reasons and Grounds for Appeal was that (R. 10):

> "* * * the trial Court failed to advise Defendant of the consequences of his plea and did not advise defendant of the difference between first degree Murder, second degree Murder and Manslaughter * * *."

Petitioner further alleged in his accompanying affidavit that

> "• • • he had no counsel to inform him of the nature of the degree to which he was pleading to and that at no time prior to the entering of such plea, did he receive any explanation of the nature of the penalty provided by law, for such offense, and had no knowledge of the effects that his plea of guilty would have on his life and liberty." (R. 12.)

> "• • • he was not apprised of the degree or of the fact that if he pleaded guilty to the alleged charge of Murder in the First Degree that he would be sentenced for and during the period of his natural life • • •." (R. 13.)

Despite these allegations, the Michigan Supreme Court did not even specifically mention these claims in its opinion. Its only relevant remarks were the following:

> "Under this record it would be an insult to one's intelligence to sustain defendant's claim that he did not understand he was charged with murder." (R. 98.)

> "After a careful consideration of the various contentions made by defendant, we are brought to the conclusion that there is no merit to his motion for leave to make a delayed motion for a new trial." (R. 102.)

In their response to petitioner's application for certiorari, filed in this Court, the attorneys for the State of Michigan rely on two further recitals as evidencing that petitioner received adequate information or advice from the trial court before acceptance of his plea of guilty. These recitals appear in the justice's return from municipal court (R. 22), wherein petitioner waived preliminary examination, and in the mittimus (R. 16).

The recital in the justice's return is as follows (R. 23):

> "• • • that the charge made against said accused person as contained in said complaint and warrant, as

above set forth, was duly and distinctly read to me, the said Municipal Justice, to said accused person and that thereupon *his* rights in the premises were duly explained to *him* by me, the said Municipal Justice. The said accused person expressly *waived* examination as to the matters and things as charged in said complaint and warrant." (Emphasis supplied.)

This recital, with the exception of the three italicized words, is a mere printed form, requiring nothing more to be filled in by the subscriber than the proper pronouns to describe the accused, and the word "waived" or "demanded" as the case might be. Also, the statement that "thereupon his rights in the premises were duly explained to him by me" must be taken in its context to mean only that the justice explained to petitioner his rights in regard to a preliminary examination. Obviously, the trial judge's duty to explain the consequences of the plea, the nature of the charge, the possible defenses thereto, and petitioner's rights in *these* premises, at the time the plea of guilty is made, cannot be discharged by a justice of the peace in proceedings irrelevant to such plea.

The recital in the mittimus includes the following (R. 16):

"*Charles Quicksall*, the Respondent in this cause, having upon *his* voluntary plea of guilty to the information filed against *him* in this Court been duly convicted of the crime of *MURDER* and the Court, before pronouncing sentence upon such plea, being satisfied after such investigation as was deemed necessary for that purpose,—*and by private examination of the Respondent* respecting the nature of the case and the circumstances of such plea, that the same was made freely and with full knowledge of the nature of said accusation, and without any undue influence * * *." (Emphasis supplied.)

This recital, like the recital in the justice's return, is a mere printed form, the only exceptions being the brief por-

tions in italics. As a matter of fact, the printed form even includes an asterisk following the phrase, "after such investigation as was deemed necessary for that purpose," and a printed direction at the bottom of the form reads:

> "NOTE—Insert in space indicated by *, whenever deemed necessary, 'and by private examination of the Respondent.'"

On the face of it, this additional statement, that petitioner's plea was made "with full knowledge of the nature of said accusation," clearly fails to evidence such explanation by the trial judge of the consequences of the plea, nature of the charge, defenses thereto, and petitioner's related rights, as to render the lack of counsel non-prejudicial. In fact, this Court appears to have held just this in *DeMeerleer v. Michigan,* 329 U. S. 663, where substantially the same language was used by the trial court in passing sentence. (See Record in the Supreme Court of the United States, October Term, 1946, No. 140, page 2.) This Court there said (329 U. S. at 665):

> "At no time was assistance of counsel offered or mentioned to him, nor was he apprised of the consequences of his plea."

In any event, it cannot be inferred from any of the vague and conclusory recitals by the trial judge that he so advised petitioner as to render his plea of guilty one properly to be accepted from an uncounselled defendant in a first degree murder case. As has been seen, the record of the proceedings on the 1947 motion before the same judge demonstrates that he completely under-estimated his duties in regard to such defendants.

D. *Petitioner Was Subjected to a Trial as to the Degree of His Offense Without Advice or Assistance, and Suffered Prejudice Therefrom*

In *Gibbs* v. *Burke*, 337 U. S. 773, the Court held that due process was denied to an uncounselled defendant when, upon trial after plea of not guilty, serious errors were committed which counsel would have prevented.

In the instant case, petitioner was subjected to a trial as to the degree of his offense, in which similar errors were committed. Thus, he not only pleaded guilty without advice, but also underwent a trial without the assistance of counsel, thereby suffering the prejudice both of an uncounselled accused who pleads guilty, and of one who pleads not guilty.

The pertinent statute provides (Michigan Penal Code, § 318 [Mich. Stats. Ann. § 28.550]):

> "The jury before whom any person indicted for murder shall be tried shall, if they find such person guilty thereof, ascertain in their verdict, whether it be murder of the first [1st] or second [2nd] degree; but, *if such person shall be convicted by confession, the court shall proceed by examination of witnesses to determine the degree of the crime, and shall render judgment accordingly.*" (Emphasis supplied.)

The italicized portion of this statute was construed by the Michigan Supreme Court in *People* v. *Martin*, 316 Mich. 669, wherein the defendant had pleaded guilty to a charge of murder under an information which, like the present one, did not specify the degree of the crime, the manner or means of perpetration, nor the attending circumstances. Twenty-two years after conviction and sentence for first degree murder, the defendant moved for a new trial. In granting a new trial, the court said:

> "The record of proceedings had on arraignment and at time of sentence is silent on the subject, but plain-

tiff [the state] now has filed the affidavits of the then sheriff and of a police officer who was present at the arraignment, who depose and say that before sentence they discussed the facts of the case with the judge and that he then interviewed the defendant. It is plaintiff's position that from these discussions the court learned that this was a killing committed in the perpetration of a robbery, and that from a full knowledge of the facts of the case, thus acquired, the court was enabled to determine the degree of the crime in conformity with the statute." (316 Mich. at 671.)

"*It is the clear intent and meaning of the statute that the court shall proceed to a determination of the degree of the crime on the basis of testimony given by witnesses sworn and examined in open court. Not having done so, the court could not, as the statute provides, 'render judgment accordingly,' and it was, therefore, without jurisdiction to impose sentence. It follows that the sentence is invalid and void.*" (316 Mich. at 672; emphasis supplied.)

To the same effect, see *People* v. *Machus*, 321 Mich. 353.

As a consequence of the lack of counsel, petitioner's ignorance, and the trial court's failure to apprise him of his rights and to safeguard the same, petitioner suffered the following specific elements of prejudice in the hearing to determine the degree of his offense: (1) He was deprived of his right, under the Michigan Constitution, not to be a witness against himself. (2) The prosecutor was allowed prejudicial leeway in the examination of witnesses, and incompetent evidence was admitted. (3) There was no cross-examination of the prosecution's witnesses, nor was any evidence introduced in petitioner's behalf.

(1) Article II, Section 16 of the Michigan Constitution provides:

"No person shall be compelled in any criminal case to be a witness against himself . . ."

It must be noted that the question here is not, as in *Adamson* v. *California*, 332 U. S. 46, whether what was done at a trial in which an accused was represented by counsel conformed to the requirements of the Federal Constitution. The question instead is whether what was done to an uncounselled accused, accorded him the rights which were his under Michigan law, and which counsel certainly would have obtained for him.

It need not be determined whether, under Michigan law, petitioner, uncounselled as he was, might have been deemed to have waived his state constitutional right by having failed to claim it. In this connection, it was revealingly stated in *People* v. *Smith*, 257 Mich. 319 (syllabus):

> "• • • said rule [i.e., the rule that the privilege against self-incrimination is waived by failure to claim it] is not applicable where witness is in custody accused of crime at time testimony is taken, where he is brought before jury for sole purpose of securing evidence on which to indict him, or where he is too ignorant to protect himself."

The record in the present case convincingly demonstrates that through lack of advice from counsel or court, petitioner was deprived of his state constitutional right. The main, if not only, basis for the trial court's determination that the offense committed was murder in the first degree is found in the judge's examination of petitioner.

That examination began in the following abrupt fashion (R. 88):

> "The Court: All right, Quicksall, you may stand up here."

The trial judge then proceeded to state his version of petitioner's unrecorded responses to prior questioning, eliciting a rarely broken chain of "yes, sirs" (R. 88-92).

Among the damaging portions of this one-sided exchange were the following (R. 89):

"Q. You further stated that after your release from prison in Ohio for non-support you returned to Kalamazoo and resumed your abode at the home of the Parkers?

"A. Yes, sir.

* * * * * * *

"Q. That thereafter, if not before, you and Mrs. Parker became intimate?

"A. Yes, sir.

"Q. Probably before, wasn't it?

"A. Yes, sir.

"Q. You also stated that in 1934 you and Mrs. Parker made an agreement that if you and she ever got caught in your unlawful intimate relationship that you would die together.

"A. Yes, sir."

And continuing (R. 91):

"Q. And you then said that she told you that her husband was talking about leaving her and getting a divorce?

"A. Yes, sir.

"Q. And that she then asked you to keep your agreement with her that you and she should die together?

"A. Yes, sir.

"Q. You say that she then produced this revolver?

"A. Yes, sir.

"Q. And that at her request you picked it up and shot her?

"A. Yes, sir.[9]

* * * * * * *

"Q. And that you then shot yourself?

"A. Yes, sir."[9]

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[9] In the 1947 proceedings, petitioner denied that he shot either Mrs. Parker or himself (R. 48, 59).

The damaging influence of this "testimony" on the trial judge's determination that the murder was in the first degree appears clearly from the judge's recital of such determination at the conclusion of the examination of petitioner. The judge said (R. 92):

> "* * * it appearing from the testimony of such witnesses *and from the statement of the respondent* that the killing was deliberate and premeditated, *and under the testimony of the respondent himself that it was in pursuance of a suicide pact,* so-called, the Court finds and determines that respondent is guilty of murder in the first degree * * *." (Emphasis supplied.)

It is highly doubtful that the necessary finding of "deliberation and premeditation" would or could have been made on the basis only of the testimony of the four prosecution witnesses (Cobb, Pierce, Ketter, and Conner; R. 64-80).

The reliance of the trial judge, in such determination, on the "suicide pact" testimony of petitioner is further illustrated by the statement in the second paragraph of his 1947 opinion denying petitioner's motion for new trial (R. 29):

> "On July 3rd Defendant was in Bronson Hospital recovering from a gunshot wound, self inflicted at the same time that he shot and killed Grace Parker in pursuance of a suicide pact, after both had consumed a considerable quantity of beer * * *."

The Michigan Supreme Court gave no specific attention to petitioner's allegation in his affidavit accompanying his Reasons and Grounds for Appeal that (R. 13)

> "* * * he was not apprised by the trial Court of the fact that he had Constitutional Rights, and that he doesn't have to answer any questions that would involve him in the alleged crime of which he was being tried."

It did, however, comment significantly at the beginning of its opinion (R. 95):

> "The death of Mrs. Parker was evidently the culmination of a suicide pact entered into by defendant and the deceased in which it was agreed that in event of detection of their unduly intimate relations they 'would die together.' "

The phrase "would die together" is a quote from the examination of petitioner by the trial court in the statutory hearing as to degree (R. 89).

As in *Gibbs* v. *Burke*, 337 U. S. 773, the violation of petitioner's right not to be a witness against himself would not have been suffered had counsel been available to him. Moreover, if an examination of witnesses off the record does not discharge the duty imposed upon the trial judge by the Michigan statute, as was held in *People* v. *Martin*, 316 Mich. 669 (*supra*, this section), it would seem that the duty is similarly not discharged by what amounts to a dictation by the judge into the record of his version of an out-of-court discussion on which he relies. Not only did the present trial judge thus circumvent the statute as construed, but also, by the manner of his examination of petitioner, he assumed the non-judicial role of prosecutor. If petitioner had had counsel, none of this would have happened.

In three other decisions handed down at the same time as the *Gibbs* decision, this Court, speaking each time through Mr. Justice Frankfurter, similarly condemned state convictions based largely on statements by uncounselled defendants who had not been advised of their state rights to remain silent.

Thus, in *Watts* v. *Indiana*, 338 U. S. 49, it was said (at 54):

> "Ours is the accusatorial as opposed to the inquisitorial system. • • • Under our system society carries the burden of proving its charge against the accused

> not out of his own mouth. It must establish its case, not by interrogation of the accused *even under judicial safeguards,* but by evidence independently secured through skillful investigation." (Emphasis supplied.)

As one of the "characteristics of the accusatorial system," Mr. Justice Frankfurter included "the duty to advise an accused of his constitutional rights." (338 U. S. at 54) And in *Harris* v. *South Carolina,* 338 U. S. 68, it was noted (at 70):

> "Petitioner was not informed of his rights under South Carolina law, such as the right to secure a lawyer, the right to request a preliminary hearing, or the right to remain silent."

To the same effect, see *Turner* v. *Pennsylvania,* 338 U. S. 62, 64.

(2) The record reveals an uninhibited and prejudicial freedom accorded the prosecutor in his examination of the four witnesses he chose to call from among the 18 listed on the information (R. 18).

Thus, despite the dangers inherent in the use of leading questions on direct examination, a glance at the record of the examination of prosecution witnesses (R. 64-80) discloses the extreme latitude allowed the prosecutor in this respect. Nor did the trial court at any point attempt to control this practice.

The prosecutor was also allowed to introduce damaging hearsay testimony, either incompetent or of borderline competence. Cf. *Gibbs* v. *Burke, supra.* Where the admissibility was doubtful at best, the prosecutor was permitted to introduce such testimony first and to attempt to qualify it afterwards. Again, the trial judge at no point cautioned the prosecutor nor independently questioned the witnesses to satisfy himself as to admissibility.

Examples of such hearsay include the following:

In the examination of Mrs. Jessie Pierce:

"Q. Later on there was something called to your attention, was there not, about some trouble that had happened over at the Parker cottage?

"A. Well, before that I had had breakfast with Mrs. Parker * * * and she asked me to take her little daughter to my home because she wanted to have a showdown with this party [petitioner]; then claimed that she was going to forbid him to come around there." (R. 67-68)

"Q. Then what occurred?

"A. Well, the daughter came screaming out and told me that Charley had shot her mother." (R. 69)

In the examination of Mrs. Cora Ketter:

"Q. On the morning of July 2nd last do you recall an occasion when Mrs. Pierce came to your house?

"A. Yes.

"Q. And told you that there was some trouble at the Parker cottage?

"A. Yes.

"Q. And wanted you to call the sheriff, did she?

"A. Yes." (R. 73-74)

In the examination of Charles Conner:

"* * * Doctor Gelding was there and handed me a gun wrapped in a handkerchief, saying that he had picked it off the bed." (R. 77)

During the examination of Mrs. Pierce and Mrs. Ketter, the prosecutor elicited hearsay testimony as to what Mrs. Parker had said in the presence of the two witnesses after the shooting (R. 71-72, 75). This testimony was to the following effect: after Mrs. Pierce had asked Mrs. Parker several times who had shot her, Mrs. Parker answered, "Charley did." Subsequent to the introduction of such

testimony, under prompting by the prosecutor, Mrs. Pierce testified that "I didn't know she was quite so bad, and she said 'No, Jessie, I am going because it is all muddy water before my eyes' " (R. 71-72); similarly, Mrs. Ketter said that "we really didn't realize how bad she was, and she made the remark that she was going to die" (R. 75). Neither of the two witnesses testified that Mrs. Parker's alleged statements about it being "all muddy water" or about dying were made before or even immediately following her assertion that "Charley" had one it. Instead, the testimony of both witnesses reveals that Mrs. Parker's expressions as to her dying were made some time after her statement as to who had shot her (R. 71-72, 75). The time interval seems from the testimony of Mrs. Pierce to have been substantial, it appearing that she left the cottage, looked for Mrs. Parker's husband, and returned to another room before Mrs. Parker made her "muddy water" statement (R. 71-72).

In Michigan, "it is elementary that before a statement made by the deceased shall be received as his dying declaration, a preliminary investigation shall be made by the court to determine its admissibility as such. Through this investigation the court must be satisfied that the declarant was in fact *in extremis* at the time the declaration was made, and that he made it under a sense of impending death". *People* v. *Christmas*, 181 Mich. 634, 646. Such investigation and such showing were not made in the case at bar.

In addition, at the conclusion of the prosecution's case, the prosecutor advised the trial judge that "there have been statements taken and the sheriff is out of the city, and he had a talk with this respondent, which carries out the same line as told to the court here" (R. 79-80). This "testimony" was thus effectively injected as corroborative of testimony actually given.

Another factor of prejudice to petitioner was the introduction, during the questioning of Conner, of a supposed suicide note without proper authentication (R. 77-78):

"Q. Did you find a note there?
"A. Yes.

"(Paper marked Exhibit C).

"Q. I show you People's Exhibit C; where was that note found?
"A. That was found on the dresser in the bedroom.
"Q. How close to this respondent?
"A. Well, it was just about room between the dresser and the bed. That was taken up, practically all of it, by the width of Quicksall's body, a distance of possibly 30 inches.

"Mr. Tedrow: We wish to offer this in evidence, your Honor.
"The Court: Do you know anything about the handwriting?
"Mr. Tedrow: It is signed.
"The Court: You may read it into the record.
"Mr. Tedrow (Reads): 'July 2, 1937. I am dying, Grace and I together, because we cannot live apart. Charles Quicksall.'"

There was no other testimony regarding this note, except for the statements of Mrs. Pierce that she had not seen any such note in the Parker cottage (R. 69, 73).[10]

(3) There was no cross-examination of the prosecution's witnesses nor introduction of evidence in petitioner's behalf; nor was petitioner advised of his rights so to cross-examine and introduce evidence.

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[10] In his "Traverse or answer to Attorney General's Response on behalf of the people of the State of Michigan," drawn *pro se* and filed in this Court, petitioner "denies • • • that there was ever a so-called suicide note."

In this respect, the present case is identical with *DeMeerleer* v. *Michigan*, 329 U. S. 663, where one of the grounds for reversal was that (at 664-65)

> "No evidence in petitioner's behalf was introduced at the trial [*i. e.*, the trial to determine the degree of murder after plea of guilty] and none of the State's witnesses were subjected to cross-examination."

It should be noted, moreover, that the state's case against DeMeerleer was premised on the testimony of three *eye witnesses* (see *People* v. *DeMeerleer*, 313 Mich. 548, 550), a factor significantly divergent from the present case, and one rendering the absence of cross-examination and of evidence in DeMeerleer's behalf less prejudicial.

A hearing can hardly be said to be "fair" where the elicitation of testimony is entirely one-sided and that one side not even subjected to cross-examination. This is true with greater emphasis where the one-sided testimony is introduced by the state in a criminal prosecution and is largely of a hearsay and circumstantial nature.

Nor did the trial judge exercise petitioner's rights for him. The record shows not one instance where the judge did other than to aid the prosecution. In his interrogation of petitioner, he made no effort to elicit evidence of extenuating circumstances such as might be termed "testimony in petitioner's behalf"; on the contrary, the petitioner was examined by the judge in such a way as to lead him into being a witness against himself.

It is not relevant, on this appeal, to consider the merits of petitioner's claim that he was not guilty (R. 9, 13, 14, 33, 35, 36, 37, 38, 48). It is, however, proper to consider some of the things bearing upon the question and degree of guilt concerning which the record is silent and into

which inquiry would have been made if petitioner had been represented by counsel. Let us note a few examples:

Of the 18 witnesses endorsed on the information (R. 18), only four were called to testify.

Though petitioner and Mrs. Parker had been drinking at the time of the shootings (R. 29, 90), there was no testimony as to whether either of them was or was not intoxicated, nor as to just how much either had drunk. The coroner, in reporting the results of his autopsy on Mrs. Parker (R. 64-66), made no reference to whether alcohol was found in the body or in what quantities. The hospital record, which must have shown petitioner's condition when admitted, was not produced. As has been previously noted, intoxication is a recognized defense in Michigan in a trial for first degree murder. *People* v. *Jones,* 228 Mich. 426.

The gun which apparently did the shooting was handed, wrapped in a handkerchief, to Deputy Sheriff Conner by one Dr. Gelding shortly after the shootings (R. 77). Yet no evidence was offered as to whether the gun was fingerprinted, or as to whose fingerprints were on it. (The gun was identified and marked as an exhibit (R. 71), but was not offered in evidence.)

The coroner (R. 64-66) did not testify as to the presence or absence of powder burns upon the body of Mrs. Parker. Nor was there any other testimony as to tests to determine whether or not Mrs. Parker or petitioner had fired the gun.

What facts might have been developed by these and similar inquiries is conjectural. But can it be doubted that the facts would have been elicited had petitioner been represented? And can it be assumed that the facts, if known, would not have tended to establish a defense against first degree murder?

There was manifest prejudice to petitioner in being without counsel during this critical hearing to determine the

degree of his offense, involving as it did the pitfalls of a trial as on a plea of not guilty. Cf. *Gibbs* v. *Burke, supra*. Moreover, the central issue of the proceeding was a highly technical one—whether first or second degree murder had been committed—in contrast to the situation in *Betts* v. *Brady*, 316 U. S. 455, 472, where the "defense was an alibi," and the "simple issue was the veracity of the testimony for the State and that for the defendant."

E. *The Courts Below Failed to Give Proper Consideration to Petitioner's Contentions That He Had Been Held Incommunicado, and That His Plea of Guilty Was the Result of Misrepresentation and Fear*

(1) The "right to the aid of counsel when desired and provided by the party" has always been included in the concept of due process in this country. *Powell* v. *Alabama*, 287 U. S. 45, 68-70. "It is hardly necessary to say that the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice." *Id.* at 53.

Petitioner asserted below that he had been held incommunicado in the hospital, and was denied opportunity to secure counsel (R. 10, 11, 34, 36, 51, 63). Thus, the following occurred at the hearing before the trial court (R. 51):

"Q. Did you at any time in this Court suggest to the Court that you wanted an opportunity to talk to a lawyer?

"A. I don't believe I ever did, your Honor. An attorney was never mentioned to me. I was never asked if I needed one. Even when I was in the hospital, I asked them. I asked them if I could have somebody call up for me. He says he wasn't allowed to let anyone in to visit me, talk to me or use the telephone.

"Q. At the hospital?

"A. At the hospital.

"Q. Who was that?

"A. The deputy sheriff.

"Q. Who was it?

"A. I don't know his name. This gentleman here was on in the evening, but I don't recall who the man was in the day time.

"Q. Mr. Ryskamp was on in the evening?

"A. Yes, sir.

"Q. How many hours,—eight hours?

"A. I couldn't say. I was asleep most of the time. They give me shots to put me to sleep. I couldn't call anybody.

"Q. Well, you weren't asleep when you were in this Court?

"A. I was sick, your Honor. I was probably not asleep, but very sick."

Again, at the conclusion of the hearing, the following occurred (R. 63):

"The Court: • • • You were not denied the right of counsel; nothing in the history and the record in this case to show that you were denied an opportunity——

"Defendant: (Interrupting) Your Honor, I couldn't get in touch. I couldn't get out of bed and use a telephone. I asked to have somebody call, but—I don't know who gave the order, but the man that was on guard told me it was the Prosecutor and Sheriff.

"The Court: How long had you been out of the hospital when you were brought into this Court?

"Defendant: I left the hospital on the 15th: the following day."

It is apparent from the trial judge's opinion on the 1947 motion that he relied upon certain testimony of Sheriff Struble in determining that petitioner had not been denied an opportunity to obtain counsel (R. 32). Regarding this testimony, the printed record shows only that Struble testified, but does not reveal what he said (R. 61). The testi-

mony is, however, set forth in the response to the application for certiorari, filed in this Court by the State of Michigan (Response, pp. 18-21). As disclosed therein, Struble testified that he had no knowledge of anyone informing petitioner that he could not have visitors or use a telephone to obtain financial assistance and a lawyer.

Struble was the only witness, other than petitioner, who testified in regard to the matter. The claim of petitioner was not contradicted by the sheriff's testimony. As appears from the excerpts from the record quoted at the beginning of this section, petitioner's claim at the hearing was, both before and after Struble had testified, that his day guard at the hospital had stated that petitioner could not "have somebody call up for me. He says he wasn't allowed to let anyone in to visit me, talk to me or use the telephone" (R. 51).

In the light of the above, it becomes highly significant that the trial judge did not even question either Struble or Ryskamp as to the identity or present availability of the day guard at the hospital, though certainly either one could have supplied information on the points. Nor did the judge question Ryskamp, the night guard at the hospital, as to any of the facts bearing directly on petitioner's claim.

It would seem, therefore, that the trial judge's perfunctory examination of Sheriff Struble, and the answers thus elicited, constitute an altogether inadequate basis for a finding that petitioner was not denied a fair opportunity to obtain legal assistance. Moreover, the very form of the questions asked Struble by the judge reveal the inadequate character of even this narrow investigation of petitioner's claim.

When petitioner's helpless condition from the time of the alleged crime, July 2, 1937, until the day he was taken from the hospital, July 15, 1937, is considered, his claim of denial of an opportunity to secure counsel becomes a

most credible one. He was without funds (R. 39, 62). In this regard, the following colloquy between him and the trial judge at the 1947 hearing is revealing (R. 62):

> "Q. What relatives did you want to get in touch with here that you claim you weren't permitted to?
> "A. I had a sister and sister-in-law down in Ohio.
> "Q. Here.
> "A. No, in Ohio, and I wanted to call them up. You see at that time, your Honor, I didn't have no money at all to hire counsel, and if I could have got in touch with them I know I could have got some."

In addition, as has been shown in previous sections of this brief, petitioner was an extremely sick man throughout this two-week period. The record fairly imports that he had no visitors, nor any contact with persons other than attendants and officers of the law. His only means of obtaining help was thus through use of a telephone. Petitioner was bed-ridden and under sedatives while in the hospital. As he stated to the trial judge, he wasn't able to get out of bed to call (R. 51, 63), even if he would have been permitted so to do by his guards.

It is submitted that in the present state of the record the substance of petitioner's contention that he was effectively denied a fair opportunity to secure counsel stands unchallenged; that the finding of the trial judge to the contrary is without support; that the peremptory and inadequate investigation into the facts by the trial judge, apparently undertaken with predetermined conclusions, did not rise to the dignity of a "hearing" on petitioner's claim of federal right; and that this matter should therefore be remanded to the state courts for proper consideration.

(2) A conviction based on a plea of guilty which is induced by misrepresentations of law-enforcement officers as to the consequences of the plea is a violation of due process.

Smith v. *O'Grady*, 312 U. S. 329, 334; see *Hawk* v. *Olson*, 326 U. S. 271, 276.

In the papers filed in the trial court in support of his 1947 motion, petitioner alleged that his plea of guilty had been "caused by fear and by erroneous belief based upon a false promise, made to him by the Sheriff and the Prosecutor" (R. 37); that he was informed by the prosecutor "that he the Prosecutor and the deputy in charge of the Hospital had a hard time from keeping the husband of the woman who he had shot from coming in the Hospital and throwing acid in the Deponent's face" (R. 36); and that "he was taken before the Judge of the Circuit Court and the Prosecutor said, 'Your Honor, Charley wants to plead guilty and get this over with' " (R. 37).

Again, at the hearing on his motion, petitioner said in response to the trial judge's solicitation of a further statement (R. 48):

> "Well, in the first place, I wasn't guilty of the crime that I was charged with, of first degree murder. I was under the impression when I pleaded guilty that I was to plead guilty to manslaughter. That was what was promised me in the hospital at the time I was there, and if I had knew I was going to be charged with the crime of first degree murder, I sure never would have pleaded guilty."

A few moments later, petitioner added (R. 48-49):

> "Then he tell me—the Prosecutor and he both tells me that they had such an awful hard time of keeping Mr. Parker from coming in and throwing acid on me, and naturally they put more fear into me than what it was, lying there with a bullet in me, pretty sick, so when they said if I would consent to plead guilty to manslaughter that they would see that I wouldn't get more than two years—or less than two years or more than fifteen, I figured that would be the best way out

> and consented. When I got into Court Mr. Tedrow [the prosecutor]—he pleaded guilty for me. I never opened my mouth, but I still under the impression that I was getting charged with manslaughter until the Court read off the sentence."

It appears from the trial judge's line of interrogation immediately following these assertions (R. 49-51; quoted *supra*, Section II, C) that he considered it a sufficient answer to petitioner's claim of misrepresentation that petitioner knew he was charged with "murder." But a claim of misrepresentation as to sentence on a plea of guilty, by public officers having the powers of a prosecutor and sheriff, is not inconsistent with knowledge that the charge against one is murder. Even a lawyer would find no inconsistency between the two, in view of the fact that manslaughter is an included offense on a charge of murder.

Nor, in any event, can knowledge that the charge is murder obviate the effect of fear on the voluntariness of the plea. Despite this, the record below discloses no inquiry whatsoever by the trial judge into the alleged report of the husband's acid-throwing threat; this allegation evoked no interest. It is significant, moreover, that even under the clumsy and inadequate cross-examination by petitioner at the hearing, Sheriff Struble admitted that he had knowledge of the acid-throwing report (Response, p. 20).

In further demonstration of the erroneous approach of the trial judge to the claim of misunderstanding through misrepresentation, the following should be noted. At the hearing on the motion in 1947, Harry Ryskamp, one of petitioner's guards during his stay at the hospital, was sworn and testified. This testimony, omitted from the printed record before the Michigan Supreme Court and this Court (see R. 61), is set forth in the response to the application for certiorari (Response, pp. 21-22).

The substance of Ryskamp's testimony is found in the trial judge's opinion denying the motion. It is stated therein:

> "During the several days of Defendant's confinement in the hospital, Sheriff Struble provided guards in his room on eight hour shifts. One of those guards was Harry Ryskamp, now a Deputy Sheriff and Court Officer. On July 3rd [the day after the double shooting] Defendant said to Mr. Ryskamp: 'How long will I have to lay here? I wish * * * it had taken effect on me like it did on her. If I get over this, it will mean life for me anyway.' * * * Mr. Ryskamp immediately made notes of his talk with Defendant, signed them and placed them in the Sheriff's file, where they have been all these years and are now" (R. 29).
>
> "Harry Ryskamp, a guard at the hospital, testified upon the hearing of the motion, *as already stated herein,* that Defendant well realized that he was guilty of murder and that he would be sentenced for life." (R. 32; emphasis supplied.)

Thus, the trial judge apparently fancied that this testimony of Ryskamp as to petitioner's hospital statement precluded any claim by petitioner that his plea had been entered as a result of misrepresentation as to the sentence he would incur. What little weight such reasoning would have in any event, considering petitioner's naturally despondent condition the day after the shooting and the incurring of his serious wound, is completely lost when it is realized that the claimed misrepresentation by the prosecutor and sheriff took place *after* the statement to Ryskamp. (See R. 36-37, the fair import of which is that the misrepresentation occurred on July 14, 1937.)

In dealing in his opinion with Sheriff Struble's testimony, the trial judge said only this (R. 32):

> "He [petitioner] claims in his motion that the sheriff and Prosecuting Attorney denied him an opportunity

to get an attorney before he was arraigned in this Court July 16, 1937.

"Charles Struble, the Sheriff in 1937, as a witness upon the hearing of this motion, denied *that* claim in its entirety." (Emphasis supplied.)

The trial judge, thus, apparently did not rely on Struble's testimony regarding the alleged misrepresentations in deciding against petitioner on this claim. The judge apparently thought that, since petitioner knew he was charged with murder and had indicated a fear on the day following his serious wounding that he would get "life," it was not important whether or not the misrepresentations were in fact made. The latter view would explain the judge's failure to examine the sheriff more carefully as to what representations, if any, were made to petitioner. The examination of Sheriff Struble by the judge, insofar as pertinent, is as follows (Response, pp. 19-20):

"Q. He says in his affidavit that he was advised by the Sheriff and Prosecuting Attorney that he better plead guilty to the charge of manslaughter, and that he, the Prosecuting Attorney, would see that he automatically would receive a sentence of two to fifteen years. Did you ever hear of anything like that?

"A. I never did.

* * * * * * *

"Q. He says under oath that he was not informed by the Sheriff or Prosecuting Attorney that if he entered a plea of guilty he would be sentenced to life imprisonment. Of course you didn't know what he would be sentenced?

"A. I didn't know."

It is submitted that the above examination, even if the trial judge had relied on it, can hardly be said to constitute such refutation of petitioner's federal claim as to warrant the summary disposition it received. First, the only other

apparent witness to the alleged transaction, besides the sheriff and petitioner, if indeed the sheriff was such a witness, was the former prosecutor, Tedrow, and he was unavailable because of illness (R. 49). Second, the sheriff had an obvious interest in denying partnership in a miscarriage of justice. Third, there was no attempt to ascertain from Sheriff Struble the character of the discussions that he admittedly (see Response, p. 18) engaged in with petitioner prior to the plea of guilty. And certainly the prosecutor had engaged in similar discussions with petitioner, since as petitioner alleged, without refutation, "he was taken before the Judge of the Circuit Court and the Prosecutor said, 'Your Honor, Charley wants to plead guilty and get this over with' " (R. 37, 49).

Representations of a most material and misleading sort could well have been made, either by the sheriff or in his presence, without the sheriff feeling impelled to answer otherwise than he did the one really relevant question asked by the judge. That question was not only duplicitous, but, indeed, was so framed as to strongly suggest, if not require, a negative response (*see supra*). It hardly appears that the judge was impartially seeking the truth in asking only that question.

It is true that petitioner was permitted to question Sheriff Struble, following the questioning by the trial judge. But it is also clear therefrom that such questioning can hardly be characterized as "cross-examination," so inept and untesting was it (see Response, pp. 20-21). The inadequacy must have been apparent to the trial judge.

The Michigan Supreme Court, in dealing with the same claim of misrepresentation on appeal, apparently fell into the same basic errors as the trial court. Thus, its opinion reveals that it too believed that if petitioner knew he was charged with murder, and expressed fear of a life sentence

on the day following the shooting, his claim of misrepresentation could not be sustained (R. 97-98).

The Michigan Supreme Court later stated (R. 99):

> "In any event since defendant did not at the time report these matters to the trial judge he should not be heard at this late date to assert them to the same judge in the hope of invalidating the sentence imposed."

This novel concept of the law seems inconsistent with the expressions of this Court in right-to-counsel cases. Nor does any such estoppel properly arise from the facts. There are several plausible explanations of petitioner's silence during the 1937 proceedings. He was very sick at that time; his whole attitude was one of submissiveness and enervation; he was an uneducated and uninformed layman who could not be expected to understand that if he had spoken, his plea of guilty should not have been accepted by the court. Perhaps he thought that the prosecutor and the sheriff, in proposing the plea of guilty, were acting as spokesmen for the judge, and that their promises would somehow be kept. As he asserted in his affidavits to the Michigan courts (R. 13; 36-37):

> "* * * he was not familiar with such procedure in Court and thought that the Prosecuting Attorney and the Sheriff was trying to help him and was telling him the truth * * *."

To deprive an uncounselled accused of his most fundamental rights unless he asserts them with the timeliness of a lawyer is, in effect, conclusively to presume waiver of such rights. This Court has rejected the view that waiver of fundamental constitutional rights can be presumed, much less be conclusively presumed. See *Johnson* v. *Zerbst*, 304 U. S. 458, 464, and *Glasser* v. *United States*, 315 U. S. 60, 70.

Petitioner was entitled to have his claim that his plea was misunderstandingly and involuntarily rendered fully

and properly considered, including adequate inquiry into and findings upon the crucial question of what representations were in fact made. It is submitted that no such consideration has yet been afforded him.

III. *Petitioner Did Not Waive His Right to Counsel*

The opinion of the Michigan Supreme Court contains language vaguely intimating that its decision was based in part on a finding that petitioner waived his right to counsel. Thus, after stating that petitioner was not "inexperienced in court proceedings" nor "one who by reason of youth or adverse circumstances should have his rights carefully protected by the appointment of counsel, which, as above noted, was not requested," the court said (R. 97):

> "He had been twice married and twice divorced. In addition to the above court experience he had been twice convicted of a felony and served penitentiary terms—16 months in Ohio [on a charge of non-support (R. 89), a fact omitted by the court] and a latter term in Michigan for breaking and entering. At the present hearing defendant at no time asserted that when he pleaded guilty he was not aware of his right to be represented by counsel, and, if circumstances justified, appointment of such counsel for him by the court. In view of defendant's intelligence, his age, and his earlier experiences in court, there would seem to be no room for doubting that defendant at the time he pleaded guilty knew of his right to counsel if requested. Even at the hearing of the present matter he made no such request, but instead he chose to proceed without the appointment of counsel. Under the circumstances disclosed the rights of defendant were not infringed by reason of counsel not having been appointed for him at the time he pleaded guilty."

The conclusive answer to any suggestion of waiver contained in the above is found in the decisions of this Court on the matter. Thus, a waiver of counsel must be intelli-

gently and understandingly made. *Von Moltke* v. *Gillies*, 332 U. S. 708, 727; *Johnson* v. *Zerbst*, 304 U. S. 458, 464; *Uveges* v. *Pennsylvania*, 335 U. S. 437, 441. This necessarily requires knowledge of the *value* of counsel in the particular case, as well as knowledge of the right to an appointment of counsel. And every reasonable presumption against waiver of this fundamental constitutional right is to be drawn in favor of the petitioner. *Johnson* v. *Zerbst*, *supra*, at 464; *Glasser* v. *United States*, 315 U. S. 60, 70; *Von Moltke* v. *Gillies*; *supra*, at 723. These established principles were completely overlooked by the Michigan Supreme Court.

As was stated in the *Von Moltke* case, where there was both a purported oral and written waiver (332 U. S. at 723-24):

> "We have said: 'The constitutional right of an accused to be represented by counsel invokes, of itself, the protection of a trial court, in which the accused—whose life or liberty is at stake—is without counsel. This protecting duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused.' To discharge this duty properly in light of the strong presumption against waiver of the constitutional right to counsel, a judge must investigate as long and as thoroughly as the circumstances of the case before him demand. The fact that an accused may tell him that he is informed of his right to counsel and desires to waive this right does not automatically end the judge's responsibility. *To be valid such waiver must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter.* A judge can make certain that an accused's professed waiver of counsel is understandingly and wisely made only from

a penetrating and comprehensive examination of all the circumstances under which such a plea is tendered.

"This case graphically illustrates that a mere routine inquiry—the asking of several standard questions followed by the signing of a standard written waiver of counsel—may leave a judge entirely unaware of the facts essential to an informed decision that an accused has executed a valid waiver of his right to counsel." (Emphasis supplied.)

There can be no doubt, in the absence of any finding by the trial court and in the other circumstances revealed by the record, that petitioner did not intelligently and understandingly waive a "known right." See *Johnson* v. *Zerbst*, 304 U. S. 458, 464. The case is completely different in this regard from *Carter* v. *Illinois*, 329 U. S. 173, 177, where the accused's plea of guilty was accepted only after he was expressly offered counsel by the trial court, and was expressly advised of the consequences of his plea, of the degree of proof necessary to convict him, and "of all his rights in the premises."

Moreover, the statements made by the Michigan Supreme Court in reaching its conclusion that the rights of petitioner "were not infringed by reason of counsel not having been appointed for him" are not such as could support even a finding that petitioner knew of his right in the 1937 proceedings to an appointment of counsel upon request.

The first statement is that petitioner was not without past experience in court—two divorce actions, a non-support charge, and a breaking and entering charge (R. 88-89). Surely, the circumstance that in Ohio a man has been twice divorced (in which suits he may never actually have appeared in court) and also has been convicted of non-support cannot demonstrate that he knows that he has the right, on a murder charge in Michigan, to be represented by counsel appointed by the court. As to the breaking and entering

conviction in 1932, there is no hint in the record as to the nature of the proceedings experienced by petitioner (R. 89). This conviction, obtained as it was in the same court that convicted petitioner of murder in 1937, was perhaps as abruptly accomplished as the conviction in the instant case. In that event, petitioner would have learned little of his rights.

The court also said that in the 1947 proceedings petitioner did not assert "that when he pleaded guilty he was not aware of his right to be represented by counsel, and if circumstances justified, appointment of such counsel for him by the court." Petitioner, however, did assert that he was denied the right to assistance of counsel (R. 11, 12, 33, 36, 51) and that he lacked the funds to retain counsel and was denied opportunity to reach Ohio relatives who might have provided such funds (R. 62, 63). Surely, a layman-prisoner proceeding without the assistance of counsel cannot be held to greater precision than this in framing an issue.

In addition, in 1937 the Michigan law did not entitle a defendant as of right to appointment of counsel at state expense, even in a murder case. As was said in *People* v. *Williams*, 225 Mich. 133, 138, quoted with approval in *People* v. *DeMeerleer*, 313 Mich. 548, 553-54, such right

> "* * * as a rule, to which, of course, there may be exceptions, cannot be invoked by an accused until after plea and not at all under a plea of guilty."

Thus, even if petitioner had been aware of the state law (an assumption unwarranted on this record), he could not have assumed, unless informed by the trial judge, that in his impecunious state he could have had the aid of counsel.

The court stated further that petitioner in 1947 "chose to proceed without the appointment of counsel." It is true

that petitioner was asked by the trial judge at the 1947 hearing, "Have you a lawyer?" "Do you expect to have a lawyer?" "You have no desire to have a lawyer attend you at this time, then?" (R. 46-47) But it is submitted that these questions, at least as understood by petitioner, constituted something less than an offer of a court-appointed counsel, free of charge. The trial court's statement "You have no desire to have a lawyer attend you at this time, then?" was reasonably subject in petitioner's mind to the interpretation that it was an offer of an opportunity for petitioner to *hire* a lawyer himself. Such interpretation fits the context, since one of petitioner's grounds for asserting a denial of due process in the 1937 proceedings was that he had not been afforded an opportunity to retain counsel. That petitioner would wish to proceed in proper person, instead of retaining a lawyer, is clearly understandable, in the light of the allegations in his affidavit to the trial court that his delay in pressing his claim of denial of due process was largely attributable to his lack of funds (R. 39). There is no reason to suppose that he would have "chosen" so to proceed had he understood that counsel would be provided at the expense of the state. On the contrary, petitioner's great appreciation for the assistance of counsel which this Court has provided indicates that he would never have refused the aid of counsel if aware that it was gratuitously offered.

Moreover, petitioner's statements in 1947 in relation to the 1947 proceeding do not establish his position in 1937, under completely different circumstances.

There is nothing in the record to indicate that in 1937, petitioner ever was apprised of his right to counsel, or otherwise knew of such right or its value. The record is thus barren of support for a finding of waiver, which finding, as has been indicated, the trial judge did not make.

IV. *The Misconceptions of the Courts Below as to the Requirements of Due Process in Proceedings Involving Uncounselled Defendants Compel the Closest Scrutiny of Their Findings.*

A careful reading of the opinion of the Michigan Supreme Court in the present case, and a measuring of it against the record, disclose serious misconception of the requirements of due process as applied to uncounselled defendants. Important in this respect is the error revealed in the following passage from that opinion (R. 101):

> "Our conclusion is that the instant case is in the field of law and governed by our decisions in such cases as People *v.* Fries, 294 Mich. 382, and in re Elliott, 315 Mich. 662.
>
> "In the Fries case a headnote reads:
>
> > "'Acceptance of plea of guilty and passing sentence for carrying concealed weapons without a license without having appointed counsel for defendant *held*, not error under record showing that he had waived examination before the magistrate, voluntarily pleaded guilty, did not indicate a desire to have counsel, and no unusual circumstances disclosed duty of court to appoint counsel.'"

The headnote thus quoted is the first of two. The second headnote, not quoted by the court, reads (294 Mich. at 383):

> "Fact that subsequent to receiving sentence for crime of carrying a concealed weapon without a license to do so defendant may have become deaf and insane is insufficient to set aside conviction *where at time plea of guilty was voluntarily entered and sentence passed record shows he was possessed of sufficient mentality to understand he had committed a crime, was being charged with it, and pleaded guilty thereto.*" (Emphasis supplied.)

The italicized portion of the second headnote indicates that the test the court applied in the *Fries* case in order to

determine whether there were such "unusual circumstances" as to require the trial court "to appoint counsel" (see first headnote) was a completely different one from that required to be applied under the decisions of this Court. And the impropriety of the test advanced in the *Fries* case is emphasized by the language of the opinion. Thus, the Michigan Supreme Court said:

> "In concluding that at the time defendant was before the circuit court his mentality was not impaired to the extent that he did not know right from wrong in relation to the offense charged or that he did not understand the nature of the offense to which he pleaded guilty we are mindful of the showing that shortly thereafter he was thought by those who had him in custody to be somewhat abnormal mentally." (294 Mich. at 384.)[11]

> "While the psychopathic report made sometime after defendant was committed to the State prison shows defective mentality, it is far from being sufficient to show that defendant was insane or an imbecile at or before the time sentence was imposed." (294 Mich. at 386.)

Application of what seems like a sanity test to determine the right to appointment of counsel is clear misconception of the law.

The trial judge apparently labored under an equally grave misconception. Thus, he was satisfied that petitioner's plea of guilty was understandingly made because, to paraphrase the test laid down in the second headnote of the *Fries* case, petitioner was capable of understanding that he had committed a crime (R. 32), that he was being charged with it (R. 49-51), and that he had pleaded guilty thereto (R. 52-53).

---

[11] Fries was sentenced November 4. (294 Mich. at 383.) December 13, about six weeks later, the prison classified him as a mental case (p. 386). Later, before the hearing, he was transferred to the state hospital for the criminal insane (*ibid*).

It may even be fairly inferred from the record of the trial court proceedings on the 1947 motion that at the time of the hearing thereon, the trial judge was not aware of (or at least was not thinking in terms of) the right to an *offer of counsel* as opposed to the right to an *opportunity to retain counsel.* Only the latter is specifically referred to in the record of such hearing. Thus (R. 51):

> "Q. Did you at any time in this Court suggest to the Court that you wanted an opportunity to talk to a lawyer?
>
> "A. I don't believe I ever did, your Honor. An attorney was never mentioned to me. I was never asked if I needed one. Even when I was in the hospital, I asked them. I asked if I could have somebody call up for me. He says he wasn't allowed to let anyone in to visit me, talk to me or use the telephone."

And again (R. 63):

> "The Court: • • • I can't decide it this moment. I will give it time and dispose of it. I would like to see the opinion of the Supreme Court in the Adrain case. [The reference is to *DeMeerleer v. Michigan,* 329 U. S. 663.] It hasn't come through yet in the advance sheets and I would like to see it before I dispose of this, because as I view this, that is the only possible question that could be worthy of serious consideration in this case, would be that you pleaded guilty and were sentenced the same day. *You were not denied the right of counsel; nothing in the history and the record in this case to show that you were denied an opportunity—*" (Emphasis supplied.)

The opinions of both the Michigan courts in this case reveal a loose scrutiny of the record regarding a matter which each deemed important. Thus, the trial court stated (R. 32):

> "Even now Defendant offers no denial of having killed Mrs. Parker. The proposed motion to vacate judgment has no merit."

Similarly, the Michigan Supreme Court said (R. 98):

> "So far as disclosed, defendant has never denied and does not now deny that he shot and killed Mrs. Grace Parker. Under this record it would be an insult to one's intelligence to sustain defendant's claim that he did not understand he was charged with murder."

Both of these statements are made in the face of petitioner's following assertion at the 1947 hearing on his motion (R. 48):

> "They [the prosecutor and sheriff, during an interview at the hospital] wanted to know how it happened, and I told them I didn't really know myself because it was an accident that just couldn't be avoided. He says 'There was no accident.' He says 'You shot her.' I says 'I never shot anybody.' I says 'I never even had hold of the gun; how could I shoot anybody?' They says 'You are guilty.'"

Moreover, petitioner again and again during these proceedings asserted his innocence of the crime for which he was convicted, *i.e.*, first degree murder (R. 9, 13, 14, 33, 35, 36, 37, 38, 48).

It is one thing to maintain that petitioner should not be believed in his denial of having shot Mrs. Parker; it is quite another thing to misread the record as containing no such denial.

Quite apart from accuracy or inaccuracy, it is significant that in deciding a case involving a claimed denial of counsel, a court should deem it relevant to assert that the particular petitioner does not deny his involvement in the acts out of which the alleged crime arises. The issue being whether or not procedural due process was granted, the substantive fact of criminal involvement is beside the point. *Powell* v. *Alabama*, 287 U. S. 45, 52; see also *Townsend* v. *Burke*, 334 U. S. 736, 741; *Williams* v. *Kaiser*, 323 U. S. 471, 475; *Tomkins* v.

Missouri, 323 U. S. 485, 489. The reference to such involvement becomes even more significant when, in a case involving a charge of murder, it takes the form of a statement that the petitioner does not deny having "shot and killed" the victim. Is the intended implication of such statement that the petitioner therefore committed first degree murder? If so, it is a groundless implication. If not, it is utterly irrelevant. In either event, the statement beclouds the real issue, *viz.*, whether the petitioner was denied due process in his conviction and sentencing.

In the present case, it is noteworthy that the trial judge immediately followed his statement that petitioner "offers no denial of having killed Mrs. Parker" with the assertion that "the proposed motion to vacate judgment has no merit." This sequence, it is submitted, reveals an extremely prejudicial line of thinking. A similarly prejudicial sequence is found in the quoted statement of the Michigan Supreme Court.

This tendency of Michigan courts in proceedings challenging procedural due process to center upon factors which tend to satisfy them as to a petitioner's guilt is an old and dangerous one, representing a pattern of which the present case is but a fragment. Thus, in *People* v. *DeMeerleer*, 313 Mich. 548, reversed, 329 U. S. 663, the Michigan Supreme Court said (at 553):

> "It should be noted that at no stage of the proceedings from 1932 to the present time has DeMeerleer denied the killing of Brown."

This statement directly and typically precedes sentences embodying the decision against the defendant on his claim of denial of due process, and this part of the opinion is in turn succeeded by the following (at 555):

> "There can be no doubt from the testimony produced prior to sentence that DeMeerleer was guilty

of the crime of murder, because of a homicide committed during the perpetration of a robbery. *People* v. *Crandell, supra.* Therefore, the court did not err in denying defendant's motion for leave to file a delayed motion for a new trial."

People v. *Crandell,* 270 Mich. 124, cited in the preceding quotation, was a particularly flagrant case in the right-to-counsel field, involving a 15-year-old boy's plea of guilty to a murder charge. In holding that counsel need not have been provided him, the court said (270 Mich. at 126):

"No claim is made by defendant of coercion in obtaining the confession; neither does he now claim that the confession was not true."

In *In re Elliott,* 315 Mich. 662, one of the two Michigan cases cited by the Michigan Supreme Court in the *Quicksall* opinion as governing its decision therein (the other case being *People* v. *Fries, supra*), it was similarly stated (at 677):

"Petitioner at no time denies his guilt as charged in the information except to now claim that he was merely an 'accessory' in the commission of the crime. In legal effect, this is an admission of his guilt, under the statute abolishing the distinction between accessory and principal. 3 Comp. Laws 1929, § 17253 (Stat. Ann. § 28.979).

"We find no merit in the foregoing grounds now relied upon by petitioner for discharge from custody."

The opinions of the trial court and of the Michigan Supreme Court throw sharp light upon their approach. They use reasoning and apply standards which are improper under the decisions of this Court in right-to-counsel cases. Their findings should thus be scrutinized with great care. Cf. *Craig* v. *Harney,* 331 U. S. 367, 373, and cases there cited; see also *Watts* v. *Indiana,* 338 U. S. 49, 51.

Conclusion

The record is convincing that petitioner was not accorded due process of law. Physically and mentally ill, in dire need of help, he was rushed from the hospital to preliminary examination and then to arraignment and trial without opportunity to obtain counsel and to prepare his defense. He was not even informed that he was entitled to have counsel or of any other of his rights, or of the consequences of the plea of guilty. And he was precipitated into a highly technical trial as to degree of guilt without assistance of counsel and without proper guidance by the court. This trial was conducted in a manner highly prejudicial to him. Furthermore, petitioner's claims that he was held incommunicado and that his plea of guilty resulted from misrepresentations by state officers have received erroneous and inadequate consideration by the courts below. It is clearly established that the petitioner was denied the fundamental rights granted to him by the Fourteenth Amendment.

The judgment below, denying petitioner's motion for leave to file a delayed motion for vacation of sentence and for new trial, should be reversed.

Respectfully submitted,

ISADORE LEVIN,
Counsel for Petitioner,
1990 National Bank Building,
Detroit 26, Michigan.

WALTER E. OBERER,
Of Counsel,
1990 National Bank Building,
Detroit 26, Michigan.

FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 33

CHARLES QUICKSALL,

Petitioner,

vs.

PEOPLE OF THE STATE OF MICHIGAN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

RESPONSE OF PETITIONER TO MOTION OF RESPONDENT FOR LEAVE TO FILE SUPPLEMENT TO RECORD.

ISADORE LEVIN,
Counsel for Petitioner.

WALTER E. OSBORN,
Of Counsel.

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RESPONSE OF PETITIONER TO MOTION OF RESPONDENT FOR LEAVE TO FILE SUPPLEMENT TO RECORD.

Petitioner, Charles Quicksall, by his counsel, in response to the motion of respondent for leave to file supplement to record, respectfully submits and shows:

1. No objection is made to the filing by respondent of the material annexed to respondent's motion, in order that such material may be brought to the attention of this Court for such consideration as is proper under the circumstances.

2. It is submitted, however, that the motion of respondent for permission to file such material "as part of the record", should not be granted—for the reasons hereinafter set forth:

(A) Petitioner's appeal to the Michigan Supreme Court was submitted June 7, 1948 (*People* v. *Quicksall*, 322 Mich. 351, 352). The material attached to respondent's motion was not filed in the Michigan Supreme Court until September 17, 1948 (as appears from the certificate of the Clerk of the Michigan Supreme Court attached thereto). It does not appear that any notice of the filing of the testimony was given to petitioner.

(B) Rule 66 of the Michigan Court Rules provides for the settling of a bill of exceptions or settled case in the trial court; and Section 12 of that rule provides that the bill of exceptions or settled case shall be signed by the trial judge. Section 14 of that rule provides, "No supplemental record will be considered on the appeal unless the same is certified by the trial judge or ordered by the Supreme Court". It does not appear that the transcript tendered for filing by the Attorney General was certified by the trial judge or ordered by the Supreme Court of Michigan.

(C) On February 6, 1948 the trial judge certified the settled case tendered and proposed by petitioner in accordance with Rule 66, Michigan Court Rules. His certificate stated that the same was complete except for a transcript of testimony taken at the time of petitioner's conviction in 1937 (R. 41). On the same day, the trial judge addressed a letter to petitioner at petitioner's prison address stating that there had been omitted "a transcript of the testimony taken before your plea of guilty was accepted" (R. 42). Such transcript was secured and printed and comprises pages 81 to 93, inclusive, of the record in this case. It was duly certified by the trial judge (R. 94) and was filed in the Michigan Supreme Court, May 29, 1948 (R. 83). Petitioner submits that the original settled case together with the supplement to the record which was

filed on May 29, 1948, constitute the record in the Michigan Supreme Court to be considered by this Court on certiorari. See *Metropolitan Railroad Company* v. *Macfarland*, 195 U. S. 322, wherein this Court referred to material found in the "printed transcript," and said (at page 330): "But, in the absence of a bill of exceptions, allowed and authenticated by the judge, these documents form no part of the record in this court, which we have alone the right to consider in determining the merits of the errors assigned".

Respectfully submitted,

ISADORE LEVIN,
Counsel for Petitioner,
1990 National Bank Building,
Detroit 26, Michigan.

WALTER E. OBERER,
Of Counsel.

Brief for the Re-spond-ent

Supreme Court of the United States

OCTOBER TERM, 1949

No. 33

CHARLES QUICKSALL,

Petitioner,

vs.

PEOPLE OF THE STATE OF MICHIGAN

On Writ of Certiorari to the Supreme Court of the State of Michigan

BRIEF FOR THE RESPONDENT

Stephen J. Roth
Attorney General of the State of Michigan

Edmund E. Shepherd
Solicitor General of the State of Michigan

Daniel J. O'Hara
Assistant Attorney General

Counsel for Petitioner

FRANKLIN DE KLEINE COMPANY, STATE PRINTERS, LANSING, MICHIGAN

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Supreme Court of the United States

OCTOBER TERM, 1949

No. 33

CHARLES QUICKSALL,

Petitioner,

vs.

PEOPLE OF THE STATE OF MICHIGAN

On Writ of Certiorari to the Supreme Court of the State of Michigan

BRIEF FOR THE RESPONDENT

I

Opinions Below.[*]

The opinion of the Michigan supreme court is reported as *People v. Quicksall,* 322 Mich. 351, 35 NW2d 904, and it appears in the transcript of record (95). The opinion

[*] Unless otherwise plainly indicated, numbers in parentheses throughout this brief refer to pages of the printed transcript of record.

(28-33) denying (33) petitioner's motion (33-39) for leave to file motion for new trial, not officially reported, is likewise published.

II

Jurisdiction.

We agree with petitioner's counsel, brief, p. 1, that the jurisdiction of this Court was timely invoked (95, 102), and that such jurisdiction, if it exists, rests upon 28 USC (1948 Revision) §§ 1257 (3) and 2101 (c), but we cannot concede the point.

We respectfully submit the following reasons for opposing jurisdiction:

1. There is lack of a substantial question raised and fully litigated in the courts below, and the petitioner has failed to overcome the strong presumption which attends any State of the Union when charged in this Court with denying due process of law to a person accused of crime.[1]

2. Several issues of fact involving petitioner's general claim of denial of counsel in his defense, were resolved against him; the trial judge refused to give credence to his testimony or statement; and such a judicial determination should bind this Court.

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[1] In other words, the premises upon which counsel has based the questions presented, brief, p. 3, have not been established beyond a reasonable doubt.

3. Certain questions of local State law, raised for the first time in this Court, were not litigated below. [2]

4. And important issues of fact were not fully resolved by the trial judge, thus leaving the record barren of factors essential to a satisfactory consideration by this Court of the federal questions presented by the petitioner.

(a) The response of petitioner to our motion for leave to file supplement to the record, consisting of a transcript of testimony of witnesses for the State, adduced in opposing the petitioner's motion for leave to move for a new trial after a delay of 10 years, bears the implication that certain questions of local Michigan practice should first be presented to the court below.

(b) Counsel for petitioner states, footnote 1, brief, pp. 2-3, that "since petitioner was without counsel until present counsel was appointed by this Court, the record below made by petitioner is not complete. The hospital record, for example, was not introduced into evidence. It has been examined, however, and shows that morphine was administered, and that petitioner was not allowed to sit up in a chair until July 12. It further shows that when he left the hospital, he was discharged as 'improved', not as 'recovered' ".—This "off the record" statement suggests to us that a remand to the court below might in justice to the petitioner, be in order. We do not seek to suppress any evidence which should be considered by this Court,

[2] These include among others, brief, pp. 51-54, objections concerning leading questions, the introduction of alleged hearsay testimony and a dying declaration of the victim of the homicide, all said to be incompetent.

but we should be accorded the privilege of offering countervailing proof.[3]

(c) Moreover, although on the occasion of hearing his motion in the trial court, petitioner stated (47) he had no desire to have a lawyer attend him, he would in the event of such a remand have the benefit of counsel; further proof regarding his present claim could then be adduced; and he would have another chance if he chose to narrate his version of the transaction, and to explain why he failed to protest the sentence imposed upon him, until approximately 10 years had elapsed. And the court below would have opportunity to decide the local State questions now suggested in the brief of his counsel, pp. 51-54.

III

Questions Presented.

We regret our inability to accept counsel's statement, brief, p. 2, of the "Questions Presented":

1. The fault in stating petitioner's first question, is in its premises (a), (b), (c) and (d).

(a) As we shall have occasion to point out in our counter-statement of the case, *infra*, there is no positive, unqualified and uncontradicted proof that at the time of his arraignment and plea before the trial judge,

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[3] We might interpolate by way of footnote [since counsel has set the precedent] that the prosecuting attorney of Kalamazoo county has been denied the right to examine the hospital records in question unless and until they are ordered to be produced in open court.

the petitioner was in such a condition of ill health (the result of a gunshot wound) that he could not comprehend the gravity of his position, or understand the charge preferred against him.

(b) We cannot concede there was undue haste in the proceedings, since haste, in and of itself, without other attendant circumstances, does not constitute a denial of due process, and the record discloses that a day elapsed between petitioner's appearance before the magistrate [where he waived examination] and his arraignment in the trial court.

(c) Although the circuit judge did not expressly inform the petitioner in open court, (87-93) of the consequences of his plea and of his rights, there is evidence [presently set forth in our counter-statement of the case] that the accused was a person of considerable experience in the courts (88-89), and that he knew he was charged with murder (49-50) and what the consequences would be (our motion for leave to file supplemental record, p. 7).

(d) The alleged errors pointed out by petitioner's counsel, in the statutory proceedings to ascertain the degree of the offense of murder charged in the information, involve questions of evidence local in their nature, questions which should first be determined by the court below, and which were not there raised.

2. Likewise, there are unacceptable premises stated in the second question presented, which will be discussed in argument.

IV

Counter-Statement of the Case.

We respectfully note the following inaccuracies and insufficiencies in petitioner's "Statement of Facts", brief, pp. 2-19:

1. It is said, brief, p. 3, that from July 2, 1937, the day of the alleged crime, to July 15, the date on which the warrant was returned and filed, petitioner had been a hospital patient under police guard, suffering from a serious gunshot wound in the chest (29, 63, 77), during which interim he was bedridden and pain-killing and sleep-producing drugs were administered (49, 51, 63).

The record pages cited do not, however, clearly indicate just how serious a wound was suffered by the petitioner, the extent of the injury, the amount of drugs administered [esp., the amount administered just prior to his release from the hospital], and unfortunately the precise condition of affairs is not revealed.[4]

2. Counsel notes in his brief, p. 4, that on July 15, 1937, the petitioner, "while still very sick", was taken from the hospital to the municipal court of Kalamazoo, where he waived examination and was bound over for trial (23).

---

[4] Since the petitioner by virtue of his choice, elected to conduct his own case upon application for leave to file a delayed motion for new trial, and on appeal to the Michigan supreme court, and since the attorney general does not seek to prevent a rigid investigation to determine the true facts in this regard, it would seem that a remand would serve the cause of justice.

This constant reiteration of the claim that when arraigned in circuit court and sentenced to life imprisonment, the petitioner was very sick, still suffering from a gunshot wound, and the implication which runs throughout his brief, to the effect that he was not in fit condition mentally or physically to comprehend his dangerous situation, leads us to add that these facts were not set forth in petitioner's motion (33-35) as reasons and grounds for a new trial, nor were they alleged in the affidavit (35-39) filed in support thereof.

It may also be noted that during the hearing on defendant's motion for new trial, his references to the wound suffered and the condition which followed, related to the period of his stay in the hospital and more especially to his lack of opportunity while bedridden to use the telephone in order to call his friends and relatives (49, 51, 63, 77), or his statements to the effect that he was sick while in court came in response to such questions as the following (51):

"Q. - Mr. Ryskamp was on in the evening?

A. I couldn't say. I was asleep most of the time. They give me shots to put me to sleep. I couldn't call anybody.

Q. Well, you weren't asleep when you were in this court?

A. I was very sick, your Honor. I was probably not asleep, but very sick".

Furthermore, there is evidence based upon his own statement (49-51) in open court on the occasion of hearing his motion, to the effect that when he waived examination in municipal court he knew he was charged with murder (49), that the warrant on a murder charge was read to him in

justice court there and he waived examination, and he knew he was bound over to circuit court on a charge of murder (50). He was in municipal court one day and in the trial court the following day, and he knew he was charged with murder (51).

Such statements would seem to bear out the certificate of the magistrate in his return to the circuit court (22-24)

> "that the charge made against said accused person as contained in said complaint and warrant . . . was duly and distinctly read by me, the said municipal justice, to said accused person and that thereupon his rights in the premises were duly explained to him by me, the said municipal justice. The said accused person expressly waived examination as to the matters and things as charged in said complaint and warrant".

3. The calendar entries (1) indicate that at 9:30 a.m. on the day the prosecuting attorney filed his information, July 16th, the defendant was arraigned, the information was read to him by the prosecuting official, the defendant pled guilty to murder,[5] such plea was accepted by the court, and the respondent was remanded to custody. Proofs were taken at 10:45 a.m. and respondent was sentenced. Such entries do not show how long a time was taken in adducing testimony, and counsel is probably mistaken in suggesting that the entire proceedings consumed a very short period of time.

4. The Journal entry of arraignment (25) is quite short, and merely recites that the defendant "having been duly

---

[5] The calendar entry is erroneous in stating that the defendant pled guilty to first degree murder, since the information charging murder without specifying the degree.

arraigned at the bar, in open court and the information being read to him by Paul M. Tedrow, prosecuting attorney, pleaded thereto, 'GUILTY', and after an examination of respondent, said plea was accepted by the Court".

The journal entry of "Conviction" (26-27), however, is somewhat more elaborate, for it records, among other things, that such plea of guilty was "accepted by the court, after an exhaustive interview with the respondent both in open court and at chambers", while the entry of sentence, styled in the printed record as "Mittimus", further discloses (16-17) that the court, before pronouncing sentence upon such plea of guilty, was

> "satisfied after such investigation as was deemed necessary for that purpose,—and by private examination of the respondent respecting the nature of the case and the circumstances of such plea, that the same was made freely and with full knowledge of the nature of said accusation, and without any undue influence".

Such examination of the accused was conducted by the trial judge pursuant to § 35 of chapter 8 of the Michigan code of criminal procedure, Michigan Stat. Ann. (Henderson) § 28.1058, which provides as follows:

> "**Sec. 35.** Whenever any person shall plead guilty to an information filed against him in any court, it shall be the duty of the judge of such court, before pronouncing judgment or sentence upon such plea, to become satisfied after such investigation as he may deem necessary for that purpose respecting the nature of the case, and the circumstances of such plea, that said plea was made freely, with full knowledge of the nature of the accusation, and without undue influence. And whenever said judge shall have reason to doubt

the truth of such plea of guilty, it shall be his duty to vacate the same, direct a plea of not guilty to be entered and order a trial of the issue thus formed."

After the first witness had been sworn (64), the trial judge made the following statement concerning the performance of the duty laid upon him by the foregoing statutory provision:

> "**The Court**: . . . . The record may show that this respondent has just offered to plead guilty and has pleaded (pled) guilty to a charge of murder; that after a full statement by the respondent in response to numerous questions by the Court in open Court and after a private interview with respondent at chambers, in both of which he has freely and frankly discussed the details of this homicide as claimed by him, the Court being clearly satisfied that the plea of guilty is made freely, understandingly and voluntarily, an order has been entered accepting such plea of guilty. It now becomes necessary for the Court to proceed with the examination of witnesses, as required by the statute, to determine the degree of the crime and to render judgment accordingly."

5. Since in our opinion, counsel's summary of the testimony is lacking in certain detail, we prefer (if the Court please) to present our own, as follows:

Horace Cobb, a licensed physician and surgeon, testified (64-66) that on July 2d last, in the hospital at Vicksburg, Kalamazoo county, Michigan, he viewed the body of one Grace Parker and later, having performed an autopsy thereon, determined the cause of her death to be a bullet wound (describing it) and the resulting hemorrhage.

Jessie Pierce, neighbor and friend of Mrs. Grace Parker, who lived nearby in the township of Pavilion, county of Kalamazoo, testified (66-73) she had known the Parkers for nearly a year; that she recalled having seen the respondent (defendant) around the Parker place the morning of the 2d day of July; and that Grace Parker asked her to take her little daughter to the home of the witness "because she wanted to have a showdown with this party", meaning Mr. Quicksall, and that she was going to forbid him coming around there (67-68).

Quicksall, she said (68), had been staying there until a few days before.

Later in the morning, this witness was called to the Parker home where she saw Quicksall, who requested her to get him a case of beer, but Mrs. Parker said "No".

Still later, the Parkers' daughter came screaming out of their house and told Mrs. Pierce "that Charley had shot her mother" (69). The witness testified (70) that when she got as far as the steps of the Parker home, she heard a shot; that she alerted the neighbors, arranged to have one of them call the sheriff, and went inside the Parker home where she found Grace Parker lying on her back on the bed, badly wounded. She told the witness that Charley (Quicksall) shot her, and she expressed the wish that Mrs. Pierce take care of her daughter, Alice. Something was said at that time by Mrs. Parker about her going to die, and she said: "I am going because it is all muddy water before my eyes" (72).

The witness also testified (72-73) she saw the defendant there at the same time, and he was lying on the floor, suffered from a wound over the stomach; he was moaning and groaning and after that he was quiet.

Cora Ketter, another neighbor, testified (73-75) that on the morning of July 2d, when Mrs. Pierce told her there was trouble in the Parker cottage, she went there and observed Mrs. Parker lying on the bed and Quicksall on the floor beside it. Each of them was suffering from a gunshot wound. The witness heard Mrs. Parker tell Mrs. Pierce that Charley had shot her; she made the remark that she was going to die, and she asked Mrs. Pierce to take care of her daughter, Alice. She said she was sitting in a chair when this happened. Quicksall was unconscious.

Charles Connor, a deputy sheriff, testified (76-80) he visited the Parker home close to noon on the 2d of July, where he found Mrs. Parker lying on the bed, and immediately adjacent to the bed on the floor was Charles Quicksall. There was a bullet wound in the left chest of Grace Parker; also a bullet wound in the left chest of Charles Quicksall.

This witness found a note on the dresser in the bedroom, near Quicksall, and which read:

> "July 2, 1937. I am dying, Grace and I together, because we cannot live apart. Charles Quicksall" (78).

6. On page 8 of petitioner's brief, counsel state:

> "The prosecutor having rested, the trial judge abruptly addressed petitioner (88):
>
> 'All right, Quicksall, you may stand up here'.
>
> The judge proceeded to recount his version of an unreported previous interview with petitioner, and to elicit affirmances from petitioner of the correctness of the judge's remarks".

And counsel, throughout this portion of his brief, pp. 8-10, insinuates that the trial judge "elicited" from the petitioner his affirmative replies, quite apparently using the term "elicit" in the secondary sense defined by Webster as "to draw or entice forth, as against will or inclination". We cannot agree that such affirmances were involuntary and we respectfully invite the Court to reread the entire transcript of the interview, which, of course, need not be repeated in this brief.

It does however appear therefrom that the colloquy between the court and the petitioner at the time of the actual arraignment and plea, was not taken stenographically, and if so taken, it has not been transcribed.

And it further appears (88), we think, that when the petitioner was arraigned that morning, pled guilty and his plea was accepted, there was a talk between the judge and the accused in open court as well as privately in chambers, all in strict compliance with the terms of the statute requiring such an investigation to determine whether the plea was voluntary.

---

7. Counsel states, brief, p. 16, that the trial judge gave no apparent consideration to the alleged incapacity of the petitioner (his claim that he was sick), either on the hearing on the motion or in the opinion (28-33) he rendered in denying the motion.

As heretofore suggested, *ante,* p. 7, the petitioner in preparing his motion for new trial (33-35) and his affidavit (35-39) in its support, did not deem it sufficiently important to mention his sickness or other incapacity.

8. Again, it is said, brief, p. 16, that several times during the 1947 proceedings, at the hearing and in moving

papers, petitioner protested his innocence of the crime for which he was convicted (9, 13, 14, 33, 35, 36, 37, 38, 48).

Although, as counsel correctly states (p. 16 of brief), the petitioner at one time claimed the shooting was an accident, he has never taken the pains to set forth circumstantially and fully his version of the transaction.[6]

9. Counsel overlooks the fact that at the hearing on petitioner's motion, the following occurred (46-47):

"**The Court**: Have you a lawyer?

Defendant: No, I haven't, sir.

The Court: Do you expect to have a lawyer?

Defendant: Well, your Honor, it took me a long time to prepare the motion, and I figure that I would be just as well qualified to present it myself.

The Court: You have no desire to have a lawyer attend you at this time, then?

Defendant: No, sir, I don't.

The Court: Some lawyer at the institution prepared these papers for you, didn't they?

Defendant: There was a man there. He has gone . . . but he helped me quite a bit".

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[6] If the petitioner desires to do so at this late date, and his counsel will so affirm, we would interpose no objection to a motion to remand.

The defendant then made the following statement (48):

"**Defendant:** Well, in the first place, I wasn't guilty of the crime that I was charged with, of first degree murder. I was under the impression when I pleaded guilty that I was to plead guilty to manslaughter. That was what was promised me in the hospital at the time I was there, and if I had knew I was going to be charged with the crime of first degree murder, I sure never would have pleaded guilty."

Petitioner, however, later admitted that when he waived examination in municipal court, he knew he was charged with murder, and that he was bound over to the circuit court on a charge of murder. And the following day when he came into the trial court, he knew he was charged with murder (49-51).

And it is pertinent to add the important fact that at the time of his conviction in 1937, the petitioner was 44 years of age (29, 88).

V

Summary of the Argument.

This summary of the argument falls into two divisions, (a) a reply to petitioner's claims, brief, pp. 19-22, and (b) a concise statement of the State's position:

A

Reply to Petitioner's Summary.

Answering the summary of argument submitted by the petitioner, we respectfully submit:

I. As our counter-statement of jurisdiction will disclose, we cannot concede that the federal question now presented, was fully litigated in the courts below, or that petitioner's claim that he was denied due process, is ripe for consideration by this Court.

II. The conviction and sentencing of petitioner for first degree murder without the assistance of counsel, was not, as counsel so earnestly contends, a denial of due process under the circumstances disclosed by the record.

A. We do not agree with counsel's conclusion that "it is clear from the record that he was neither physically nor mentally capable of defending himself in the proceedings", and we cannot accept the premises from which counsel draws such a conclusion. The Court is respectfully invited to refer to our counter-statement of the specific facts [rather than such a broad conclusion].

B. We deny that petitioner "was rushed through examination, arraignment, conviction, and sentence, and was denied a fair opportunity to meet the charge against him", brief, p. 20.

Here again counsel's emphasis is on the claim that petitioner never had opportunity to prepare his defense, because (it is said) "he was physically and mentally incapable of so acting". There is in the record, as we read it, no evidence of mental incapacity, and such a claim was not

asserted in the trial court when the petitioner filed his motion for new trial.

Our own impression is that the record also reveals evidence which would justify the conclusion that the defendant when accused was anxious to get it over with, and that his plea was uncoerced and voluntary.

C. In this subdivision of the brief, counsel draws broad, sweeping conclusions, with which we cannot agree.

D. It is perfectly true, as counsel asserts, that in Michigan, it is the mandatory duty of the trial judge after a plea of guilty to a charge of murder, to proceed to a determination of the degree of the crime on the basis of testimony taken in open court.[7]

But we do not subscribe to the thought that petitioner suffered the same grave prejudice in the course of this statutory hearing, by reason of ignorance and lack of assistance of counsel or court, as did the petitioner in *De Meerleer v. Michigan*, 329 U.S. 663. The petitioner in the latter case was "a seventeen-year-old defendant", while here the respondent was a mature man, 44 years of age, who had had considerable experience in the criminal courts and had served terms of penal servitude.

Counsel says that the petitioner suffered because the prosecuting attorney was allowed complete and prejudicial freedom in examining witnesses and that incompetent evidence was admitted. This particular phase of the case was not presented to the courts below as a ground for new trial

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[7] Mich. Penal Code, § 318, Mich. Stat. Ann. (Henderson), § 28.550; People v. Martin, 316 Mich. 669.

or a reason for appeal, and the Michigan supreme court did not pass on any of the questions of evidence now presented.

While it is true there was no cross-examination of the prosecution witnesses, and no introduction of evidence in petitioner's behalf, this fact alone is not determinative.

E. Counsel also urges, brief, p. 21, that the trial judge made no adequate inquiry into petitioner's claims that he had been held incommunicado, and that his plea of guilty was brought about by misrepresentations as to the sentence which would follow.

The fault in such argument is that counsel in his highly-commendable zeal quite naturally accords to his client absolute verity and refuses to believe the testimony of any other witness. We on the other hand gather from the entire record that the circuit judge was painstaking in his conduct of all proceedings; that he brought no coercion to bear upon the accused; that he listened patiently to all he had to offer; that he was justified in believing those available witnesses whose testimony contradicted that of the petitioner, and in refusing to give the defendant any credence.

As the court below so aptly expressed it (99):

> "The circuit judge who heard this motion, being the same judge who accepted defendant's plea of guilty, evidently gave no credence to defendant's assertions in the respect under consideration, nor do we. In any event since defendant did not at the time report these matters to the trial judge he should not be heard at this late date to assert them to the same judge in the hope of invalidating the sentence imposed". 322 Mich. at 358

III. There are, we think, several facts in this case which would establish that petitioner waived his right to counsel under the standards which this Court has announced.

IV. And we deny, of course, that the courts below applied improper standards in determining whether or not petitioner was denied due process. In resolving such an issue, we think, it is only fair that a court should give some consideration to the factor of guilt and the inclination of the accused person freely and fully to confess it.

B

Concise Statement of State's Position.

First: Certain questions now presented by petitioner, though not raised below, should we respectfully suggest either be disregarded or the cause be remanded to the court below. Our statement on the subject of jurisdiction covers this point.

Second: The petitioner in this cause is bound by the rule recognized by this Court in the decisions cited by Mr. Justice Frankfurter in *Watts v. Indiana*, 338 U.S. 49, that on review of state convictions, all those matters which are usually termed "issues of fact" are for the conclusive determination by the state courts and are not open for reconsideration by this Court.[8]

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[8] The rule applies to this case with peculiar force. Petitioner asserted in his motion that he was promised leniency if he pleaded guilty to manslaughter, and that other matters were misrepresented. Witnesses for the State contradicted him. And the trial court, followed by the Michigan supreme court, refused to believe his testimony.

A kindred doctrine accepted by this Court is that state proceedings leading to a conviction of crime, and the judgment of state courts upon questions involving claims of denial of due process, are entitled to the benefit of a strong presumption of validity, the overcoming of which places upon the person asserting such a claim, a heavy burden of establishing it. We do not think the petitioner has sustained this burden.

Third: Petitioner's cause is distinguishable from those of others who have pressed similar claims in this Court,

De Meerleer v. Michigan, 329 U.S. 663,

Uveges v. Pennsylvania, 335 U.S. 437.

1. As the court below observed (100), the defendant in the case of *De Meerleer, supra*, "was an inexperienced youth of the age of only 17 years, who was arrested, convicted by a plea of guilty of murder in the first degree after he had sought to plead guilty to murder in the second degree, and was sentenced, all on the same day".

Here, the petitioner, when before the court for arraignment, was by no means a man lacking in ordinary intelligence, "he was not youthful, neither was he one who was inexperienced in court proceedings. Instead, at the time he pleaded guilty he was 44 years of age", 322 Mich. 355.[9]

2. There is little, if any, credible evidence that petitioner was physically or mentally impaired.

3. He was aware of his right to counsel if requested. And, as noted by the court below, 322 Mich. 355, "Even

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[9] And he had had experience in courts of law.

at the hearing of the present matter he made no such request, but instead he chose to proceed without the appointment of counsel".

Fourth: The trial court, after a careful consideration of conflicting testimony, determined that petitioner's claims of misrepresentation in connection with his plea were false:

1. The petitioner was not entitled to credence, because of his long delay in asserting his claim of denial of counsel, because he waited until important witnesses were no longer available, because of his failure to protest at the time of sentence, and because of his inconsistencies.

2. The court below sustained the trial judge in refusing to give petitioner any credence. It held correctly, we respectfully submit, that defendant did not plead guilty through a misunderstanding as to his being then charged with murder; that the petitioner had ample opportunity, both in open court and in private consultation with the circuit judge, to advise the latter of any or all of the circumstances concerning which he complains, and that he does not now assert that he made any claim of that character before the circuit judge.

VI

The Argument.

Point One

Certain questions presented for the first time should be disregarded or in the alternative we suggest remand of the cause as not ripe for decision of federal questions.

We agree with counsel, brief, p. 22, that in the courts below, petitioner made the basic claim that he had been denied counsel in violation of the due process clause, and that in presenting it, he followed accepted state procedure.[10] And we are of course in harmony with the thought that technical oversights or inadequacies in a petition prepared by any layman-pauper-prisoner should be liberally regarded.[11]

We maintain, however, that certain questions of local State law, raised here for the first time, were not litigated below, and that important issues of fact were not fully resolved by the trial court, thus leaving the record barren of certain factors essential to decision of the federal questions involved.

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[10] A motion for leave to file a delayed motion for new trial, followed by an appeal from adverse order.

[11] This does not mean that gross misstatements of substance should be disregarded. And we cannot overlook the fact admitted by petitioner (47), that in preparing his motion he was aided by a prisoner-renegade lawyer. The papers so prepared are not the work of an amateur.

The Court is respectfully referred to our statement concerning jurisdiction published in the forepart of this brief.

Point Two

The State of Michigan stands at the bar of this Court accompanied by strong presumptions of validity of her judicial proceedings, and determination by her courts of issues of fact [as distinguished from broad legal conclusions] should be accorded absolute verity.

We recognize without question the reviewing power of this Court over the decisions of State courts of last resort, on issues of law involving claims of constitutional infringement, and the breadth of such a review, *Watts v. Indiana*, 338 U.S. 49. But as Mr. Justice Frankfurter said in announcing the judgment of the Court in the case of Watts:

> "In the application of so embracing a constitutional concept as 'due process', it would be idle to expect at all times unanimity of views. Nevertheless, in all the cases that have come here during the last decade from the courts of the various States in which it was claimed that the admission of coerced confessions vitiated convictions for murder, there has been complete agreement that any conflict in testimony as to what actually led to a contested confession is not this Court's concern. Such conflict comes here authoritatively resolved by the State's adjudication. Therefore only those elements of the events and circumstances in which a confession was involved that are unquestioned in the State's version of what happened are relevant to the constitutional issue here. But if force has been applied, this Court does not leave to local determination whether or not the confession was voluntary. There is torture of mind

as well as body; the will is as much affected by fear as by force. And there comes a point where this Court should not be ignorant as judges of what we know as men".

Moreover, we respectfully submit, the State of Michigan is entitled in all respects to the benefit of the strongest possible presumption in favor of the constitutional validity of her court proceedings and the integrity of her judges.[12]

Boiled down to their essence, the claims asserted by the petitioner in his motion addressed to the trial court (33-35), and in his affidavit (35-39), are these:

1. That several times while held in custody, the sheriff and the prosecuting attorney refused to allow petitioner to use the telephone to call his friends or relatives to obtain the assistance of counsel.

2. That he was advised by the sheriff and the prosecuting attorney that he had better plead guilty to the charge of manslaughter, and the prosecuting attorney promised him he would receive a sentence of not less than 2 and not more than 15 years. Thus, it is said, his plea was entered because of misunderstanding, through the effect of such misrepresentation (33).

3. That the prosecuting attorney informed him his life was in great danger, since the prosecutor and the deputy sheriff on guard at the hospital were having a hard time "from keeping the husband of the woman

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[12]

This Court would never presume, for example, that a State trial judge would deliberately and deceitfully draw from a person accused of crime affirmative replies to leading, incriminating questions, against the defendant's will and inclination. Bute v. Illinois, 333 U.S. at 671.

who he had shot from coming in the hospital and throwing acid in the deponent's [petitioner's] face" (36).

4. That his plea of guilty was caused by fear and by erroneous belief based upon a false promise, made to him by the sheriff and the prosecutor (37).

The foregoing allegations, we respectfully submit, have reference to specific facts, provable if true by competent evidence.

Petitioner's affidavit was met by countervailing proof, and the trial judge resolved these specific issues of fact against the claims of the petitioner.

Point Three

The facts in this cause are distinguishable from those involved in other recent cases decided by this Court.

It would be presumptuous on our part, in the face of counsel's collection of this Court's decisions, and other efforts in that regard,[13] to attempt an historical analysis of those opinions rendered on the subject of denial of counsel in state courts during the past 10 years.

Suffice it to point out a few distinctions between those decisions upon which counsel more strongly relies, and the case at bar.

First, however, we think it should be noted that upon re-examination of state convictions by this Court, the fail-

[13] For a comprehensive annotation of such decisions: 7 ALR2d 1004, 1084-1089.

ure of the trial court to advise an accused of his right to counsel standing alone in non-capital cases "has in no instance been held to constitute a deprivation of rights guaranteed by the due process clause", 3 ALR2d 1084, but in all cases such failure, combined with other factors, has been held to contravene the requirements of due process within the purview of the Fourteenth Amendment, necessitating the setting aside of such convictions.

It is pertinent nevertheless to observe a few clear distinctions between the uncontroverted facts in this case and those involved in a few decisions on the right to counsel.

The case of *De Meerleer v. Michigan*, 329 U.S. 663, is, without doubt, the most outstanding decision in counsel's mind. The court has so adequately drawn the distinction (100-101) that we refrain from further comment:

> "The defendant in that case was an inexperienced youth of the age of only 17 years, who was arrested, convicted by a plea of guilty of murder in the first degree after he had sought to plead guilty to murder in the second degree, and was sentenced, all in the same day".

Suffice it to add, as this Court will recollect, that the picture presented by the record in that cause was that of a bewildered youth, wholly incapable of comprehending what was taking place, and whose plea of guilty was somewhat ambiguous.

The petitioner at bar stood in quite a different position. As the Michigan court so aptly said (97):

> "At the time defendant was before the court charged with this murder, he by no means was a man lacking

in ordinary intelligence, he was not youthful, neither was he one inexperienced in court proceedings. Instead, at the time he pleaded guilty he was 44 years of age. The record made at that time and particularly his attitude and conduct in court in this later hearing disclosed that he was a man of fairly keen intellect, and not one who by reason of youth or adverse circumstances should have his rights carefully protected by the appointment of counsel, which, as above noted, was not requested. He had been twice married and twice divorced. In addition to the above court experience he had been twice convicted of a felony and served penitentiary terms—16 months in Ohio and a later term in Michigan for breaking and entering. At the present hearing [on motion for new trial] defendant at no time asserted he was not aware of his right to be represented by counsel, and, if circumstances justified, appointment of such counsel for him by the court. In view of defendant's intelligence, his age, and his earlier experiences in court, there would seem to be no room for doubting that the defendant at the time he pleaded guilty knew of his right to counsel if requested. Even at the hearing of the present matter he made no such request, but instead he chose to proceed without the appointment of counsel", 322 Mich. at 355-356.

The court below also drew clear distinctions between the facts involved at bar and those presented to this Court for consideration in an early, if not leading, case,

Powell v. Alabama, 287 U.S. 45, 57,

noting that the factual situation in the case of *Powell* was not at all comparable to the background of the instant case. There, this Court said, p. 57:

"The defendants, young, ignorant, illiterate, surrounded by hostile sentiment, hauled back and forth under guard of soldiers, charged with an atrocious crime regarded with especial horror in the community where they were to be tried, were thus put in peril of their lives within a few moments after counsel for the first time charged with any degree of responsibility began to represent them".

Nor is the case at bar at all comparable to that of *Uveges v. Pennsylvania*, 335 U.S. 437.

There, without being advised of his right to counsel or being offered counsel at any time between arrest and conviction, a 17-year-old youth charged under four [4] indictments with four [4] separate burglaries, for which he could have been given maximum sentences aggregating 80 years, pleaded guilty and was sentenced to from 5 to 10 years on each indictment, the sentences to run consecutively. The record showed no attempt on the part of the court to make him understand the consequences of his plea (headnote 1).

Speaking for this Court, Mr. Justice Reed said, in part, 335 U.S. 441:

"Others of us think that when a crime subject to capital punishment is not involved, each case depends on its own facts. . . . Where the gravity of the crime and other factors—such as the age and education of the defendant, the conduct of the court or the prosecuting officials, and the complicated nature of the offense charged and the possible defenses thereto—render criminal proceedings without counsel so apt to result in injustice as to be fundamentally unfair, the latter group holds that the accused must have legal assistance under the Amendment whether he pleads guilty

or elects to stand trial, whether he requests counsel or not. Only a waiver of counsel, understandingly made, justifies trial without counsel".

We respectfully submit, upon consideration of the entire record, that the petitioner intelligently and knowingly though not expressly waived his right to counsel. If his own statements are true, he knew of that right when he was in hospital, for he contended below and still insists that while there under guard he was denied the right to use the telephone for that purpose (34, 36, 63).

In his motion (34) he asserts denial of constitutional rights "because the respondent was further denied the right to consult with his counsel, his family or his friends".

In his supporting affidavit (36) he alleges "that several times while he was held in custody he tried to use the telephone to consult with his friends or relatives to obtain the assistance of counsel but was refused this right and was advised by the sheriff and the prosecuting attorney that he could not have the assistance of counsel nor could he have any visits until he had been to court".

When on hearing of his motion, the court stated, "You were not denied the right of counsel; nothing in the history and the record in this case to show that you were denied an opportunity—", the defendant replied (63): "Your Honor, I couldn't get in touch. I couldn't get out of bed to use a telephone".

Clearly then the petitioner was fully aware of his right to counsel, and he admitted in open court when his motion was heard, that when he waived examination, he knew he was charged with murder, he knew he was bound over to the circuit court on a charge of murder, and he knew he was charged with murder when there arraigned (49, 50, 51).

We respectfully submit it may safely be said that the petitioner waived his right to counsel.

If he was aware of such a right while in the hospital, why did he change his mind? Why did he not demand counsel when brought into open court? And why did he plead guilty to the offense of murder? There was no intimidation or coercion on the part of the court or the prosecuting officers, and no claim of that nature is made in this Court.

The answer to the foregoing questions may be stated in the alternative: either the defendant was deceived by the officers into the belief that he was to be charged with manslaughter and would be accorded leniency, or he went into court where, out of his own conscience, he voluntarily confessed his guilt.

Which brings us to our final point:

Point Four

Petitioner's claim of deceit and misrepresentation on the part of prosecuting officials, is invalid; he is not entitled to credence, and the determination of the courts below should be sustained.

The court below said (99), 322 Mich. at 358:

> "The circuit judge who heard this motion, being the same judge who accepted defendant's plea of guilty, evidently gave no credence to defendant's assertions in the respect under consideration, nor do we. In any event since defendant did not at the time report these matters to the trial judge he should not now be heard

at this late date to assert them to the same judge in the hope of invalidating the sentence imposed".

We respectfully submit that the Michigan supreme court was correct in so holding, and there are several good and sufficient reasons therefor:

First: The defendant's story is too fantastic for belief.

It runs something like this: Charged with murder and held in a hospital room under police guard, the petitioner when questioned (36) by the sheriff and prosecuting attorney "definitely stated that he was not guilty of the alleged crime charged against him". During his hospital stay he was refused the use of the telephone to call friends, relatives and counsel, and he was told he could not have the assistance of counsel "until he had been in court". Advised he had better plead guilty to the charge of manslaughter, he was told by the prosecuting attorney he would see that petitioner would receive a sentence of from two to fifteen years; that his life was in great danger because the sheriff and the prosecutor had had a hard time keeping the husband of the woman whom he had shot from coming in the hospital and throwing acid in his face; that although not guilty of the alleged shooting he was affected with fear and, feeling that the prosecutor and sheriff were trying to help him, knowing that he was not familiar with court procedure, he "thought that the prosecutor was telling him the truth although both the prosecutor and the sheriff at that time knowing fully that deponent [petitioner] was pleading guilty to an alleged crime which he did not commit, and for which he did not intend to plead guilty to" (*sic*, 36-37).

Further, according to Quicksall, his plea of guilty was caused by fear and by erroneous belief based upon a false promise, made to him by the sheriff and prosecutor and his

plea of guilty was entered because of misunderstanding, the effect of misrepresentation (37).

This story, we have noted, is unbelievable [and evidently the courts below did not believe it] because, in the first place, the petitioner had ample opportunity to communicate his predicament to the trial court; he had the benefit of a private conference with the judge in chambers and after that in open court, when charged in the simplest language with having killed and murdered one Grace Parker, not with manslaughter, if such a promise had been made, he was not prevented from asserting himself and telling his present story. No policeman's club was over his head, there was no coercion or intimidation, no threats of any kind, he was in a friendly atmosphere, and the record is wholly devoid of any claim that his confession and plea were extorted from him.

Second, the petitioner is entitled to no degree of credence, and the court below so held after carefully examining the record.

An innocent man, or one who had been promised leniency would not have maintained silence in the face of the information read to this defendant, or in the face of the life sentence imposed upon him. He would not, as did Quicksall, narrate the story of the killing and admit as he did that the woman was shot by him in fulfillment of a suicide pact. An accused person who had been assured that upon pleading guilty to manslaughter he would receive a term of two to fifteen years, would have protested in open court, and if not in open court, he would have proclaimed the injury to his friends and relatives and the guardians of his person.

Instead, we have a man who waited for ten years before he made any complaint. And when that period of time had

passed, the prosecuting attorney, whom he now accuses, became a helpless, inarticulate paralytic.

When a man such as this, after the lapse of 10 years, contends that in accepting his plea of guilty the circuit judge denied him due process, we are inclined to remark that after all there is such a thing as unfairness to the State itself.

Third: No present consideration should be given petitioner's claim that at time of arraignment he was too ill to know what was happening.

Counsel's brief is permeated with the suggestion that the petitioner was too sick and too mentally disturbed to appreciate his situation; that he had only too recently been discharged from the hospital after suffering a gunshot wound, that he had been given drugs which overpowered his reason, and when brought into court, counsel would have this Court infer, the petitioner was still subject to the influence of powerful drugs.

Of course if this were true, we would not be here.

But the record contains little, if any, hint of such a condition of affairs; the question was not raised in the lower courts; such an objection was not made in petitioner's motion for new trial, and such facts were not set forth in his supporting affidavit. This claim is not mentioned in the memorandum of the circuit judge and it is not discussed in the opinion of the court immediately below.

We respectfully submit that on the face of the record as it stands, such a claim should not be considered.

VII

Conclusion

The contention that the petitioner was rushed to trial while "physically and mentally ill" is reasserted in counsel's conclusion. Such a claim, we respectfully submit, cannot be based upon the record, and quite evidently is founded upon independent inquiry of hospital authorities.

Such being the case, we would respectfully suggest that in the discretion of this Court the cause might be remanded for the purpose of allowing the court below in turn to remand the record to the successor of the trial judge in order that further testimony may be taken. The prosecuting attorney has just informed us that the day guard at the hospital is now available as a witness.

In any event, on the face of the record as it now stands, we respectfully submit that the judgment of the court below should be affirmed.

Respectfully Submitted,

Stephen J. Roth
Attorney General of the State of Michigan

Edmund E. Shepherd
Solicitor General of the State of Michigan

Daniel J. O'Hara
Assistant Attorney General

Counsel for Petitioner